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FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

ROBERT E. LEE
H. REX LEE
CHARLOTTE T. REID
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F.C.C. 73-1234

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of JOSEPH A. ACCETTA, D.B.A. RADIO-PHONE COMMUNICATIONS BUSINESS RADIO STATION KSW 547 JOHNSTON, R.I. Request for Issuance of Cease and Desist Order and Initiation of Revocation Proceedings	File No. 03968-IB-83

MEMORANDUM OPINION AND ORDER

(Adopted November 28, 1973; Released November 29, 1973)

BY THE COMMISSION:

I

PRELIMINARY STATEMENT

1. We have before us the matters raised in the "Petition for Reconsideration," filed on April 26, 1973, by Mobilphone-Paging Radio Corporation (Mobilephone). This pleading is directed to the March 27, 1973, ruling of the Chief, Safety and Special Radio Services Bureau, denying issuance of a cease and desist order and initiation of revocation proceedings against Joseph A. Accetta, the licensee of Business Radio Station KSW 547.[1] We have considered the points argued by Mobilphone on reconsideration; and, for the reasons set out below, we adopt and affirm the March 27, 1973, letter-ruling of the Bureau and deny the relief sought by Mobilphone in its petition.[2]

II

BACKGROUND STATEMENT

2. The controversy in this case arises out of the application of Travel-Phone Corporation (Travel-Phone), filed January 25, 1971. In that application, Travel-Phone sought to establish a new common carrier station at Johnston, Rhode Island. This was protested by Joseph Giorgianni, an existing carrier operating in the same general area as

[1] The March 27, 1973, letter-ruling of the Chief, Safety and Special Radio Services Bureau and all related filings are referenced in the Appendix to this opinion.

[2] The Safety and Special Radio Services Bureau could have passed initially on the questions posed in Mobilphone's petition for reconsideration. See Sections 0.331(a)(8) and 1.106(a)(1) of the Rules. However, in the circumstances at hand, the Bureau referred the case to us, directly, for disposition; and, in this instance, we will pass on the issues presented for decision at this time, so that the dispute can be resolved on as expeditious a basis as possible.

104-018—74——1

that Travel-Phone planned to serve with its facility.[3] Subsequently, Giorgianni's system was acquired by Mobilphone; and Mobilphone, as Giorgianni's successor-in-interest, is now pressing the points raised by him, together with additional ones of its own.[4] Some of these will have to be disposed of in the common carrier proceeding, of course; but others come within the province of the Safety and Special Radio Services Bureau; and it is to these that we address ourselves, here.

3. The central allegation made by Mobilphone in its pleadings goes to the question of whether Joseph A. Accetta, president, treasurer, and principal stockholder of Travel-Phone (Accetta) has employed radio facilities authorized for his use in the Business Radio Service for unlawful purposes.[5] Specifically, Mobilphone asserts that Business Radio Station KSW 547 is being used by Accetta to provide radio common carrier service to the public at Johnston, Rhode Island, in the Providence area.

4. In support of its contention, Mobilphone alleges that Accetta caused advertisements to be placed in a local newspaper and in the Providence "Yellow Pages." These ads, according to Mobilphone were designed to solicit customers for radio communication services of the type lawfully available only from duly authorized and licensed common carriers. Further, Mobilphone furnished an affidavit from one George Peloso, a Mobilphone subscriber, in which Peloso avers that Accetta, in a telephone conversation, offered to furnish service to him (Peloso) without mention of any requirement for FCC licensing. Also, Mobilphone employees, it says, made similar telephonic inquiries; and they were similarly solicited, either by Accetta or by one of his employees.

5. On these points, Accetta acknowledges that the advertisements in question were placed by him in the newspaper and Providence "Yellow Pages." As to the newspaper ad, Accetta states that it was addressed solely to business concerns, eligible in the Business Radio Service; that he, Accetta, was, and continues to be, in the business of renting, leasing, and selling radio equipment, and in servicing it; and that, in his opinion, there was and is nothing misleading or improper about that advertisement.[6]

6. On the question of the propriety of the newspaper advertisement, we agree with Accetta. Radio-Phone Communications can sell, rent or lease radio gear, and service it, and such activities do not, without more, violate any of our rules and policies. Further, "automatic car-to-car service" (mobile-to-mobile) simply describes one mode of opera-

[3] See "Petition to Deny Application," filed on March 10, 1971, by Joseph Giorgianni. This petition and related pleadings are now pending in the common carrier proceeding. See *In the Matter of Application of Travel-Phone Corporation*, File No. 3985–C2–P–71.

[4] See "Supplement to Petition to Deny" filed by Mobilphone in July 1972, in the above referenced common carrier proceeding.

[5] To better define the relationship of Accetta to the various business enterprises mentioned in our opinion, we note that Radio-Phone Communications is a sole proprietorship, owned and operated by Joseph A. Accetta. Travel-Phone Corporation, the applicant in the common carrier proceeding is owned principally by Accetta (75 percent stock interest) and, accordingly, controlled by him. Travel-Phone Answering Service is owned by Travel-Phone Corporation and it is operated by it. Thus, Accetta either owns or controls each of these business enterprises.

[6] The advertisement employs the following language, "2-way Radio Systems," "Sales and Service," "Rental Programs Available," "Automatic Car-to-Car Service," "No Operators—50 Mile Range," "Any Communications Gap Can be Closed by Our 24 Hr.-Operators!," "Call for Action Now," "Radio-Phone Communications."

tion of a community repeater (mobile relay) station. Normally, such transmissions are automatic, in the sense that the transmissions of mobile units are "repeated" automatically and retransmitted on the base station (mobile relay) transmit frequency. There is nothing wrong or even unusual about this method of operation. Further, while the ad does say that "any communications gap can be closed by our 24 Hr.-operator," this function could, and it seems to us does, refer to services (other than dispatching) which were and are available from Travel-Phone Answering Service. We do not regulate such business enterprises; and we see no merit in Mobilphone's contentions on this point.

7. With regard to the advertisements in the Providence "Yellow Pages," we agree that they do indicate that Travel-Phone could provide "mobile telephone service" and "radio pocket paging." But Accetta explains that he placed the ads in the "Yellow Pages" in anticipation of favorable action on his (Travel-Phone's) common carrier proposal. He thought it would be acted upon by the date of publication of the "Yellow Pages" (June, 1972), since it had been pending since January, 1971, a period of approximately 18 months. In these circumstances, he erred, but we feel this was not with unlawful intent. Moreover, Accetta reports that he has discontinued these advertisements, and notes that he never furnished radio communication services, through the shared use of his mobile relay station, to any person not eligible in the Business Radio Service. Our files show this to be so, i.e., that in each case in which service is provided, we were advised of the arrangements under which sharing was to take place; and the nature of the business activities of each user; and other pertinent details of the sharing plan. This being so, unless Accetta has falsified his reports to us, and we have no reason to believe that he has, we are persuaded that the placing of the advertisements in the "Yellow Pages" is not an act calling for the revocation of Accetta's license for Business Radio Station KSW 547.[7]

8. Further, we have reviewed, with some care, the basic arrangements made by Accetta for the shared use of Station KSW 547. As of the date of the March 27, 1973, ruling of the Safety and Special Radio Services Bureau, these included agreements between Accetta and four other business concerns. These were the Iannuccillo Construction Company; C & L Company Builders; E. W. Audet and Sons, Inc.; and Allyn Carmello, d/b/a Swimming Pool Filling Company. The first four entities (including Accetta) are licensees in their own right, with separate authorizations for mobile relay, control and mobile station units. None received telephone answering or interconnected service from Accetta. No paging service was provided; and no radiotelephone system is used by any of these persons. Mobilphone has alleged and shown nothing to indicate that these are not the facts.

9. Arrangements of the type described are not unique or even unusual. They are routinely authorized under our multiple licensing practices. Allyn Carmello did receive service under Accetta's radio license; but this was under a "cooperative" agreement, on a not-for-profit basis. While Accetta did dispatch for Carmello, this did not con-

[7] As previously noted, Accetta has already cancelled these ads. Accordingly, no meaningful purpose would be served by the issuance of a cease and desist order, since it would order him to stop doing something he has already stopped doing.

travene any regulation or policy, now in force, governing the use of shared stations in the Business Radio Service.[8] Further, Accetta did not provide this service until he was specifically authorized by us to do so.[9] Accordingly, it appears that in every case involving the shared use of Station KSW 547, we were advised of the sharing plan; and in none of them did we, then, or do we, now, see any unlawful act on Accetta's part.

10. Additionally, as noted, above, Mobilphone says that, upon inquiry by his employees and by one of his customers, George Peloso, Accetta did hold Travel-Phone out as a licensed common carrier authorized to provide paging and mobile telephone services.[10] Accetta denies this. While he acknowledges that he received many inquiries as to the services he could make available, he states that he never intentionally led anyone to believe that common carrier services, as such, were available from him or from any of his other business enterprises. Further, he points out, even now, no one not eligible in the Business Radio Service shares the use of his repeater.

11. Overall, we feel Accetta's statement of what was said and done for potential and actual customers should be accepted. We believe the factual showings justify this conclusion. Mobilphone points to no instance in which Accetta provided service to anyone without first obtaining prior authority from us to do so. Moreover, in every instance the agreement for sharing was supplied for our review. In such circumstances, we see no reason justifying revocation of Accetta's Business license.

12. There is one final point to which we will address ourselves. We have Accetta's admission that at one time his station was used by persons in his employ "for a small printing business" and in "local political campaigns." [11] This was improper. Accetta understands that it was. But we are assured that such practices will not be permitted in the future. Thus, there is no need for a formal cease and desist order to be issued. As to revocation, we agree with the Bureau that the violations described, above, all factors considered, are ones which should be placed in the records of this licensee and used in considering any future rule violations in the use of his facility; and that they are not ones calling for revocation. Therefore, we will not initiate such proceedings.

13. Accordingly, IT IS ORDERED, That, upon reconsideration of March 27, 1973, letter-ruling of the Safety and Special Radio Services Bureau, referenced in the foregoing opinion, the ruling is ADOPTED AND AFFIRMED: and That the requests of Mobilphone-Paging Radio Corporation for issuance of a cease and desist

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[8] The rules referred to by Mobilphone in its petition for reconsideration are, for the most part, only proposed regulations. They have no force and effect at this time. See *Multiple Licensing—Safety and Special Radio Services*, 24 FCC 2d 510 (1970).

[9] See License File, Business Radio Station KSW 547.

[10] Peloso's affidavit, in pertinent part, reads as follows:

"... Mr. Accetta told me I would have to purchase my own equipment but he would provide telephone answering service and interconnect service for a monthly fee; that Mr. Accetta did not tell me that I needed to get my own license from the Federal Communications Commission ..." See Reply to Objection to Supplement to Petition to Deny, filed August 4, 1972, Affidavit of George Peloso.

[11] See Response of Joseph A. Accetta to September 8, 1972, inquiry of the Safety and Special Radio Services Bureau, filed October 6, 1972.

order and for institution of proceedings to revoke the license for Business Radio Station KSW 547 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Petition to Deny Application, filed March 10, 1971, by Joseph Giorgianni, In the Matter of Application of Travel-Phone Corporation, File No. 3985–C2–P–71.

Reply to Petition to Deny, filed April 5, 1971, by Travel-Phone Corporation in the above referenced common carrier proceeding.

Reply of Joseph Giorgianni to Reply to Petition to Deny, filed April 29, 1971, in the above referenced proceeding.

Supplement to Petition to Deny submitted to the Safety and Special Radio Services Bureau, July 3, 1972.

Letter, dated June 24, 1972, to Chief, Safety and Special Radio Services Bureau, from Mobilphone-Paging Radio Corporation, filed June 30, 1972.

Letter-inquiry, dated July 7, 1972, to Joseph A. Accetta from Chief, Safety and Special Radio Services Bureau.

Response of Joseph A. Accetta to letter-inquiry of the Chief, Safety and Special Radio Services Bureau, filed July 25, 1972.

Objection to Supplement to Petition to Deny submitted to the Safety and Special Radio Services Bureau, July 26, 1972.

Reply to Objection to Supplement to Petition to Deny submitted to the Safety and Special Radio Services Bureau, August 4, 1972.

Letter dated August 4, 1972, from counsel for Mobilphone-Paging Radio Corporation, to Chief, Safety and Special Radio Services Bureau, filed August 4, 1972.

Response of Joseph A. Accetta to letter of Mobilphone-Paging Radio Corporation of August 4, 1972.

Letter-inquiry, dated September 8, 1972, to Joseph A. Accetta from Chief, Safety and Special Radio Services Bureau.

Response of Joseph A. Accetta to letter-inquiry of the Chief, Safety and Special Radio Services Bureau, filed October 6, 1972.

Letter dated October 18, 1972, from counsel for Mobilphone-Paging Radio Corporation, to Chief, Safety and Special Radio Services Bureau, filed October 18, 1972.

Letter dated March 20, 1973, setting forth Affidavit of Joseph A. Accetta in response to inquiries made at meeting of March 9, 1973, between counsel for the parties, the Safety and Special Radio Services Bureau, and Joseph A. Accetta.

Letter-ruling, Safety and Special Radio Services Bureau, dated March 27, 1973.

Letter to Chief, Safety and Special Radio Services Bureau, dated April 5, 1973, from counsel for Mobilphone-Paging Radio Corporation, filed April 6, 1973.

Petition for Reconsideration filed April 26, 1973, by Mobilphone-Paging Radio Corporation.

Letter-Response of Joseph A. Accetta to Petition for Reconsideration submitted by counsel May 25, 1973.

Reply to Opposition to Petition for Reconsideration, filed May 31, 1973, by Mobilphone-Paging Radio Corporation.

F.C.C. 73-1254

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

LICENSEES CAUTIONED ON FAILURE TO PERFORM SALES CONTRACTS

(November 28, 1973)

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, H. REX LEE, REID, WILEY, AND HOOKS, WITH COMMISSIONER JOHNSON DISSENTING, ISSUED THE FOLLOWING PUBLIC NOTICE.

LICENSEES CAUTIONED ON FAILURE TO PERFORM SALES CONTRACTS

From time to time the Commission receives allegations that broadcast licensees are not performing their advertising contracts in full. These complaints are ordinarily considered to be private disputes to be settled by the parties or by local courts or agencies. In such cases, the Commission has taken and will continue to take whatever action may be appropriate in light of any final court or local agency determination.

Section 73.1205 of the Commission's Rules, the fraudulent billing rule, prohibits the issuance of any documents that misrepresent the number, nature, duration or time of day of commercial announcements broadcast on the station, or the charges made for those announcements. We have cautioned that violations of the fraudulent billing rule may result in renewal or revocation proceedings to determine whether the licensee should continue to operate the station. See the Public Notice of December 7, 1972, 38 FCC 2d 1051, 25 RR 2d 1759. The Commission has designated a number of fraudulent billing cases for hearing since the adoption of that Notice.

Recently, another problem has come to the Commission's attention. A licensee, either through its own salesmen or through independent sales contractors, sells special advertising packages. Typically, these are high volume, low cost arrangements for commercial announcements scheduled at times when the licensee normally cannot sell advertising or to dealers who do not normally buy time. Payments are required in advance. Because of the prepayment, no bills or other documents are issued by the licensee and the fraudulent billing rule is inapplicable. Such agreements are perfectly legitimate, if performed in accordance with their terms. However, in some cases, after accepting prepayment, licensees have substantially failed to broadcast the advertising covered in their contracts. For example, in a recent investigation it was found that an independent contractor sold commercial mentions of numerous advertisers totaling 9,240 announcements. Viewing the facts most favorably to the licensee, only 1,800 of the announcements were broadcast.

This document will serve to put all broadcast licensees on notice that where, as in the example given above, a pattern of partial or nonperformance of advertising contracts is found, resulting from either willfulness or lack of adequate supervision or control, serious questions will be raised as to the licensee's qualifications to hold a broadcast authorization, and appropriate sanctions or hearings will be ordered.

F.C.C. 73–1210

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ALABAMA CABLEVISION CO., GADSDEN, ALA.	CAC–1217 AL003
ALABAMA CABLEVISION CO., RAINBOW CITY, ALA.	CAC–1218 AL011
ALABAMA CABLEVISION CO., GLENCOE, ALA.	CAC–1219
For Certificates of Compliance	AL004

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 30, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. On September 14, 1972, Alabama Cablevision Company, a wholly-owned subsidiary of TelePrompTer Corporation, filed the above-captioned applications for certificates of compliance to add signals to existing cable television systems at Gadsden, Rainbow City, and Glencoe, Alabama, communities located within the Anniston, Alabama, smaller television market. Cablevision states that these 12-channel systems currently provides subscribers [1] with the following television broadcast signals:

WHMA–TV (CBS, Channel 40), Anniston, Alabama
WHNT–TV (CBS, Channel 19), Huntsville, Alabama
WAAY–TV (NBC, Channel 31), Huntsville, Alabama
WMSL–TV (ABC, Channel 48), Huntsville, Alabama
WCIQ (Educ., Channel 7), Mt. Cheaha State Park, Alabama
WADI–TV (NBC, Channel 13), Birmingham, Alabama
WBRC–TV (ABC, Channel 6), Birmingham, Alabama
WAGA–TV (CBS, Channel 5), Atlanta, Georgia
WTCG (Ind., Channel 17), Atlanta, Georgia
WQXI–TV (ABC, Channel 11), Atlanta, Georgia
WSB–TV (NBC, Channel 2), Atlanta, Georgia

Cablevision requests authority to add to its systems the signal of:

WATL–TV (Ind., Channel 36), Atlanta, Georgia

On December 30, 1971, Cablevision gave notice pursuant to former Section 74.1105 of the Commission's Rules of its intention to add the signal of Station WATL–TV to its systems. No objections to the notification were filed, and accordingly, Cablevision was authorized to carry Station WATL–TV prior to March 31, 1972. Carriage of WATL–TV is thus grandfathered pursuant to Section 76.65 of the Rules.

2. On October 30, 1972, Taft Broadcasting Company, licensee of Station WBRC–TV, Birmingham, Alabama, filed oppositions to

[1] Subscriber distribution for the Cablevision systems is as follows:
Gadsden—10,069 subscribers of approximately 52,863 population.
Rainbow City—442 subscribers of approximately 3,107 population.
Glencoe—423 subscribers of approximately 2,600 populations.

Cablevision's applications. While not contesting Cablevision's right to add WATL–TV to its systems, Taft questions whether WAGA–TV, Atlanta, Georgia, was actually carried on these systems prior to March 31, 1972. Taft submits that the Annual Report(s) of Cable Television Systems (FCC Form 325) filed with the Commission by Cablevision on June 30, 1972, for the calendar year 1971, do not indicate that the signal of Station WAGA–TV was carried on Cablevision's systems. Taft requests that these applications not be granted in the absence of a showing by Cablevision that the signal of Station WAGA–TV was in fact regularly carried prior to March 31, 1972.

3. In response to Taft's oppositions, Cablevision states that its 1971 325 forms did not list WAGA–TV because at the time the forms were filed, Cablevision had temporarily discontinued carriage of WAGA–TV. Cablevision explains that WAGA–TV was carried on its systems from 1961 until November, 1971, at which time the signal was temporarily removed from the systems. The reason for this temporary removal was that the systems commenced carriage of Station WTCG, and because of the systems' limited channel capacity, carriage of WAGA–TV could only be continued if it were carried on a shared basis with the time and weather cable channel. Cablevision decided not to carry WAGA–TV on this shared basis because the systems were having technical difficulties with the reception of WAGA–TV's signal. These technical difficulties stemmed from the fact that a power line running between Gadsden and Piedmont, Alabama, became noisy during certain times of the year because of cracked insulators, and affected reception of WAGA–TV. The power company has performed and is continuing to perform work on the power line which has mitigated the noise problem; consequently, Cablevision plans to resume carriage of WAGA–TV on a shared basis with its time and weather channel. In these circumstances, Cablevision contends carriage of WAGA–TV on its systems is grandfathered. Cablevision believes that Commission certification is not necessary for it to resume carriage of WAGA–TV, though it mistakenly listed WAGA–TV as a signal being carried in its certification applications. If the Commission should disagree and believe that certification is necessary for carriage of WAGA–TV, Cablevision requests such certification on the basis that carriage of WAGA–TV is grandfathered.

4. In response to Cablevision's explanation, Taft states that it recognizes the Commission may determine that in view of the lengthy and substantially continuous carriage of WAGA–TV, and the brief period of non-carriage prior to March 31, 1972, the requirements of Section 76.65 have been met sufficiently to accord grandfathered status sought by Cablevision. However, Taft requests that the Commission clearly distinguish between this situation and the case where a station was carried only briefly or sporadically, or where carriage was terminated a long time prior to March 31, 1972.

5. Section 76.65 of the Rules provides that none of the carriage rules shall be deemed to require the deletion of any television broadcast signal which a cable system was authorized to carry or was lawfully carrying prior to March 31, 1972. In *Midwest Video Corporation*[2]

[2] FCC 73–37, 40 FCC 441 (1973).

we indicated that claims of grandfathered status for signals carried by cable systems sometime prior to March 31, 1972, but discontinued prior to that date, would be carefully examined according to the uniqueness of the facts involved in each situation. In the instant case, we note WAGA–TV was continuously carried on Cablevision's systems for approximately ten years and was temporarily deleted only because of technical difficulties with reception of the signal. Accordingly, we find that in these circumstances, WAGA–TV was a signal "lawfully carried" prior to March 31, 1972, and the brief period of its non-carriage prior to March 31, 1972, does not serve to disturb its grandfathered status. However, we cannot agree with Cablevision's contention that certification is not necessary for it to resume carriage of WAGA–TV on its systems. Section 76.11(a) of the Commission's Rules provides in pertinent part that as of March 31, 1972, "[N]o cable television system shall . . . add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission." In the instant case, WAGA–TV had been temporarily deleted from Cablevision's systems for almost six months as of March 31, 1972, and could not, within the clear meaning of Section 76.11(a) of the Rules, be added again to the systems without first obtaining certificates of compliance.[3] This situation, however, must be distinguished from the case where a system has been previously certified to carry a signal, which is subsequently temporarily deleted. In that case, absent unusual circumstances, it would be unnecessary for a system to obtain another certificate of compliance before again commencing carriage of the previously certified signal.

In view of the foregoing, the Commission finds that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certification" filed October 30, 1972, by Taft Broadcasting Company, IS DENIED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC–1217, 1218, 1219), filed by Alabama Cablevision Company, ARE GRANTED and the appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[3] Hence, in accordance with Cablevision's request (see paragraph 3, *supra*), we are treating its certificate applications as expressly requesting certification of WAGA–TV.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Staff Authorization To Grant Cable Television Relay Stations and Business Radio Stations Transfer Applications From Time-Life Cable Communications to American Television & Communications Corp.	

NOVEMBER 6, 1973.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON TO ATC—TIME-LIFE CABLE TV MERGER

On August 2, 1973, the Commission authorized the staff to grant the applications for authority to transfer a number of cable television relay stations and business radio stations from Time-Life Cable Communications to American Television & Communications Corp. Commissioner Johnson dissented to the authorization and has now issued the attached statement.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

The Cable Bureau responds to one of the largest mergers in the still youthful cable industry by presenting to the Commissioners, for their "information and/or discussion," some pending "applications for Commission Consent to the transfer of five Cable Television Relay and Business Radio Station authorizations . . .."

This seemingly routine item casually goes on to advise the Commissioners that the American Television and Communications Corporation (ATC) is also about to acquire Time-Life Cable Communications (except for its New York City area franchises).

ATC is the fourth largest cable television company in the U.S. It currently holds over 100 operating cable companies (108 at last count) already serving 315,000 subscribers. The full potential number of subscribers for these systems is unknown. The number of additional franchises for which ATC is now competing is unknown.

What *is* known is that the Commission has today approved ATC's acquisition of Time-Life cable. Time-Life has 11 systems (8 in operation; 3 more franchises) with over 45,000 current subscribers. Potential subscribers for these 11 systems are unknown.

The acquisition is valued at $11,000,000.

The infant cable industry is very rapidly coming into the mold of the conventional American oligopolistic pattern—where imitation rather than innovation comes from "competitors," and inflation rather than price competition greets the consumer.

The FCC has already created monopolies and oligopolies in two of its other major regulated industries—telephone and television. (The 15 network-*owned* stations gross roughly half of the revenue of the country's 800 television stations—in *addition* to the network's earnings from networking and other conglomerate enterprises.) But those industries have taken 50 years or more to reach their current status.

It is shocking that an infant industry like cable television, which has scarcely begun to toddle under the FCC's broadcaster-protective cable regulations, has already made such strides toward oligopolistic status.

At our Commission meeting discussion of this item, I made a formal motion that the Commission at least *ask* the Department of Justice if it might possibly have any antitrust objections to this further reduction in cable competition. The disinterest of the Commission in antitrust issues is reflected in the startling fact that such a motion could not even garner a second.

The Cable Bureau didn't even think the matter warranted a formal Commission statement. It recommended that it "proceed with the grants at the staff level." The Commissioners agreed.

The "five cable television relay and business radio station authorizations" presumably have by now been granted. The cable industry has grown more restrictive. The Justice Department has not been heard from.

It may be business as usual, but I dissent.

F.C.C. 73-1169

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
AMERICAN TELEPHONE & TELEGRAPH CO.
For Waiver of Section 61.38 of the Commission's Rules

NOVEMBER 14, 1973.

AMERICAN TELEPHONE & TELEGRAPH CO.
32 Avenue of the Americas,
New York, N.Y. 10013

(Attention: W. E. Albert—Administrator Rates and Tariffs)

GENTLEMEN: This refers to your Tariff Application No. 931 dated February 26, 1973 (as amended by your letter of May 24, 1973) in which you request waiver of the requirements of Section 61.38 of the Commission's Rules with respect to tariff revisions you propose to file applicable to private line services provided to "Composite Data Service Vendors."

The effect of your application, if granted, would be to add further exceptions to the general prohibitions in your private line service Tariff F.C.C. No. 260 against re-sale and third party traffic handling. The new additional exemption would apply to a class of customers which you propose to call "Composite Data Service Vendors." The definition you propose for such vendors is a customer who uses the telephone company services in the provision of a service combining the use of "computers and terminal equipment" with the use of communication services of a carrier to provide "a single integrated data service for data processing and data message switching, or for data message switching." You explain that, under this proposal, certain customers will benefit who cannot, under present AT&T tariffs, obtain private line services under AT&T's tariff and use such services to provide retail services to the public, such as hybrid data processing services, hybrid communications services and so-called "value added" Data Message switching services.

Under your proposal, a communications common carrier providing communication services by means of its own interexchange channel facilities or those of a subsidiary or affiliated corporation may not be a composite data service vendor. Thus, carriers, such as MCI and Datran, would not be treated as "Composite Data Service Vendors" and could not obtain private line facilities under the AT&T tariffs for the handling of traffic for their customers. Furthermore, under your proposal, "Composite Data Service Vendors" would be precluded from obtaining any private line service under the Telpak discount

rates and from obtaining service under the joint use provisions of the tariff.

In support of your request for waiver of the requirements of Section 61.38, you state that "there will be no significant or measurable change in revenues or costs resulting from these tariff changes" on a short term basis; that the studies required by that Section would not be warranted "in view of the minimal effect of the filing," and that AT&T "simply has no way of accurately assessing the potential markets for composite data service vendors and their potential use of AT&T's services."

As you are aware we have received comments on your application from the Computer and Business Equipment Manufacturer's Association (CBEMA), Data Transmission Company (Datran), MCI Carriers (MCI), Telenet Communications Corporation (Telenet), and Graphnet Systems, Inc. (Graphnet), and Computer Timesharing Services Section (CTSS). In these comments Telenet supports your application; MCI and Datran oppose your application on the grounds among others, that there is no evidence to support your conclusion that the effect of the subject filing will be minimal in the next three years; Graphnet does not address the issue of whether Section 61.38 should be waived; MCI and Datran raise other questions concerning the merits of the proposed tariff revision independently of whether Section 61.38 data is supplied; and CBEMA and CTSS express concern over the clarity of the language of the proposed tariff and also question the validity of the aforementioned restrictions.

We believe that there is some merit to the contentions of opponents of your application that AT&T should be able to provide the data specified in 61.38.

Your statement that AT&T cannot "accurately" assess the potential markets for composite data service vendors is not of itself a sufficient basis for waiving Section 61.38. We recognize such inability and stated expressly in our Memorandum Opinion and Order of March 27, 1973, in Docket 18703 (FCC 73-327), that "it is true that no carrier can foretell with complete accuracy what will happen over a future 3-year period, particularly in a field as dynamic as interstate and foreign communications." However, we stated that "on the other hand, it appears to us that responsible management would not ordinarily undertake to make new or revised service or rate offerings unless and until it has surveyed the potential market and made some assessment of what it may expect will be the results of such offering." 40 FCC 2d 149; 154 (1973).

Notwithstanding the foregoing, we note that your proposed tariff revision will remove, for the benefit of an additional group of customers, certain restrictions on the use of the carrier's service (restrictions against re-sale and third-party traffic) that have already been removed by AT&T in behalf of a significant number of other customer classes, such as the airlines. To this extent, the proposal, if implemented will lessen a discrimination that is apparent on the face of the tariffs without changing any rates or charges applicable thereto. We, of course, take no position as of this time on the obvious question as to the lawfulness of the remaining discrimination of the tariff as revised. We will treat this aspect of the matter in due course.

Under all of the foregoing circumstances, we believe that it is not essential that the Commission have before it the detailed cost and other data required by Section 61.38 before it can determine "whether such proposed tariffs present questions of lawfulness which warrant our investigation and hearing." 40 FCC 2d 149; 153.

Accordingly, our grant of your application herein is limited solely to the waiver of the provisions of Section 61.38 of the Rules so as to permit you to file the tariffs in full conformity with all other rules and with the applicable provisions of the Act. The lawfulness of the tariffs will be subject to challenge by properly supported petition or complaint and to such further action as the Commission may deem necessary.

Special Permission No. 6827 grants the request for waiver of Section 61.38 contained in your Application No. 931.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1211

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of BELLE GLADE COMMUNITY TELEVISION CO., INC., BELLE GLADE, FLA. For Certificate of Compliance	CAC-2109 FL184

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 30, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON, REID, AND HOOKS CONCURRING IN THE RESULT; COMMSSIONER H. REX LEE ABSENT.

1. Belle Glade Community Television Company, Inc., operates a cable television system at Belle Glade, Florida. The system is located outside all major and smaller television markets, and serves approximately 2,061 subscribers with the following television broadcast signals: [1]

WPBT (Educ., Channel 2), Miami, Florida
WTHS-TV (Educ., Channel 2), Miami, Florida
WTVJ (CBS, Channel 4), Miami, Florida
WCIX-TV (Ind., Channel 6), Miami, Florida
WCKT (NBC, Channel 7), Miami, Florida
WPLG-TV (ABC, Channel 10), Miami, Florida
WLTV (Ind., Channel 23), Miami, Florida
WPTV (NBC, Channel 5), Palm Beach, Florida
WEAT-TV (ABC, Channel 12), West Palm Beach, Florida
WINK-TV (CBS, Channel 11), Fort Myers, Florida
WBBH-TV (NBC, Channel 20), Fort Myers, Florida

2. On February 23, 1973, Belle Glade filed an "Application for Certificate of Compliance," seeking authorization for continued operation of its system, which was admittedly energized without first obtaining Commission approval pursuant to Section 76.11(a) of the Rules. In explanation of the failure to obtain a certificate, Mr. Nicholas R. duPont, president of the system, states that he purchased the corporation from Charles A. Dunbar with the understanding that Mr. Dunbar would "take all steps and perform all activities necessary to assure the proper construction of the system and that it be operated in accordance with the requirements of the franchise and any other applicable rules and regulations." However, a dispute arose between Mr. duPont and Mr. Dunbar, and the latter left the corporation in November, 1971. Construction proceeded apace, and the system began serving subscribers in April, 1972. Consequently, Mr. duPont's lack of cable background led him to seek experienced management assistance or a pur-

[1] The community of Belle Glade has a population of 15,949. The cable system commenced operations in April of 1972, and currently has 12 channels available for carriage of broadcast and access services. Of these channels, 10 are used for television signal carriage and one is used for time-weather automated program originations.

chaser for the system, and it was at this time that he first became aware of the certificate requirements of the Rules. He claims that apart from his failure to obtain a certificate of compliance, his operation has been, and is, entirely consistent with the Rules, and his application is unopposed.

3. Although Belle Glade's explanation does not justify its commencement in violation of our Rules, we note that it has voluntarily come forward and conceded its error. Because the submitted evidence shows that the violation was not intentional and since the system otherwise appears to be operating in accordance with our Rules, we believe that a suspension of service is not called for. We have previously stated our reluctance to deny cable subscribers service because of a mistake by the system operator where no public interest reason requires doing so. *LaFourche Communications, Inc.*, FCC 73–122, 39 FCC 2d 472 (1973); *cf. Coldwater Cablevision, Inc.*, FCC 71–793, 31 FCC 2d 17 (1971). We emphasize, of course, that intentional attempts to circumvent our Rules will be met with appropriate administrative measures.

4. We note that there are certain variations in Belle Glade's franchise from the standards of Section 76.31 of the Commission's Rules. The franchise for Belle Glade was awarded by the City Commission of Belle Glade on August 10, 1970, after a full public proceeding. The initial term of the franchise is 20 years. Subscriber rates are established which can only be changed with the consent of the City Council. A local office and service procedures are specified. An annual fee of 6 percent must be paid to the city. Finally, we note that the system is already constructed. Only substantial compliance with Section 76.31 of the Rules must be demonstrated for franchises granted before March 31, 1972, and, measured by the criteria established by *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10 (1972), *reconsideration denied*, FCC 73–293, 40 FCC 2d 493 (1973), we find that this franchise substantially complies with Section 76.31 of the Rules in a manner sufficient to justify a grant of the above-captioned application until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certificate of Compliance" (CAC–2109) filed by Belle Glade Community Television Company on February 23, 1973, IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

104–018—74——2

F.C.C. 73–1154

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of BLUEGRASS BROADCASTING CO., INC., LEXINGTON, KY. For Renewal of License of Standard Broadcast Station WVLK, Lexington, Ky.	Docket No. 18285 File No. BR–1953

APPEARANCES

Harry M. Plotkin, *Gene A. Bechtel* and *Thomas Schattenfield* (Arent, Fox, Kintner, Plotkin & Kahn) on behalf of Bluegrass Broadcasting Co., Inc.; and *Richard M. Riehl* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted November 14, 1973; Released November 29, 1973)

COMMISSIONER ROBERT E. LEE FOR THE COMMISSION: COMMISSIONERS JOHNSON AND WILEY DISSENTING; COMMISSIONER H. REX LEE DISSENTING AND ISSUING A STATEMENT

1. This case comes before us on exceptions to an Initial Decision (FCC 71D–75) released October 22, 1971, which recommended that a short-term renewal of one year be granted on the above-captioned application.[1] The Broadcast Bureau (hereafter Bureau) contends that a renewal for any period is unwarranted and that the renewal application of the licensee, Bluegrass Broadcasting Co., Inc. (hereafter Bluegrass), should be denied. Essentially, we are confronted on this appeal with the issue of whether the Hearing Examiner [2] properly concluded that Bluegrass possesses the requisite qualifications to remain the licensee of a broadcast facility.

2. Oral argument was heard before the Commission *en banc* on June 7, 1973. For the reasons hereinafter set forth we are in agreement with the Examiner's ultimate conclusion that the license renewal application should be granted for a short-term. We therefore affirm his Initial Decision and adopt his findings and conclusions contained therein, except as modified in this Decision and in the Rulings on the exceptions as set forth in the attached Appendix.

[1] Exceptions and a brief in support were filed by the Chief, Broadcast Bureau on December 13, 1971; a statement and brief in support of the Initial Decision, which also contains limited exceptions, were filed December 13, 1971, by Bluegrass Broadcasting Co., Inc. Replies to the above pleadings were filed on January 24 and 25, 1972, by Bluegrass Broadcasting Co., Inc. and by the Chief, Broadcast Bureau, respectively.

[2] Effective September 6, 1972 (FCC 72–760), Hearing Examiners are now designated as Administrative Law Judges.

3. This case had its genesis in a complaint received by the Commission from a former employee of Bluegrass, charging that Station WVLK had engaged in the fraudulent billing of advertisers.[3] On the basis of this complaint and a field inspection of the station thereafter conducted by the Commission, the WVLK renewal application was designated for hearing to determine whether Bluegrass: (1) engaged in fraudulent billing practices; (2) misrepresented its policy on commercial time standards; (3) misrepresented facts or was lacking in candor in written or oral statements to the Commission; (4) falsified program logs; (5) failed to maintain program logs in the manner prescribed by Sections 73.111 and 73.112 of the Commission's Rules; (6) failed to operate the station in conformance with prior proposals regarding public service announcements; (7) failed to exercise reasonable licensee control and responsibility in the management of the station; and (8) ultimately, whether Bluegrass possesses the necessary qualifications to remain the licensee of Station WVLK (FCC 68–811, released August 5, 1968; reconsideration denied, 23 FCC 2d 270 (1970); clarification request dismissed, 25 FCC 2d 1036 (1970)). The Commission's Review Board (FCC 68R–430, released October 15, 1968) thereafter added an issue to the proceeding to permit consideration of Bluegrass's past broadcast record of public service programming as a possible mitigating factor.

4. Evidentiary hearings in the proceeding were subsequently held on August 25–28 and on October 26–27, 1970, before Hearing Examiner Millard F. French. In an Initial Decision (FCC 71D–75) released October 22, 1971, the Hearing Examiner recommended a grant of Bluegrass's renewal application for a license term of one year only, rather than the normal three year period. Briefly stated, the Hearing Examiner found and concluded the following: (1) that during a period in 1967 covering approximately seven months (March through September), advertisers were overbilled by WVLK in the amount of $36,122.26, and such overbilling was the direct result of the conduct of George Webb,[4] the general manager of the station; (2) that while there were some deviations, Bluegrass has nevertheless operated WVLK in accordance with the commercial time standards proposed in prior renewal applications; (3) that the WVLK general manager was lacking in candor and was guilty of false representations to the Commission; (4) that the WVLK program logs were falsified and were not maintained in the manner prescribed by the Commission's Rules, and that such logging infractions were directly attributable to the failure of the WVLK general manager to perform properly his duties and were also the direct consequence of the conduct of the WVLK general manager in overbilling advertisers; (5) that Bluegrass did not conform to its proposals regarding public service announcements, especially as proposed in its 1967 renewal application; and (6) that the corporate officials of Bluegrass were derelict in the

[3] The background of this proceeding is more fully set forth in the Initial Decision and has not been restated in detail here.

[4] In a statement filed on September 27, 1973, pursuant to Section 1.65 of the Rules, Bluegrass advised that Mr. Webb died on August 28, 1973.

degree of control and responsibility exercised over the management of WVLK.[5]

5. Despite his determination that the general manager of WVLK made misrepresentations to the Commission, the Examiner nevertheless concluded that the licensee, Bluegrass, was not guilty of a deliberate intent to mislead the Commission or of a lack of candor. Holding that a distinction must be drawn between deliberate attempts to deceive and mere inadvertences, carelessness or preoccupation with other matters, and taking into account other facts and surrounding circumstances established by the evidence of record which he deemed to be mitigating, the Examiner concluded that the "drastic sanction" of denial of WLVK's renewal of license application was not called for.[6]

6. The Bureau's primary challenge is directed to the Examiner's failure to find that Bluegrass made deliberate misrepresentations to the Commission and that it therefore lacks the requisite qualifications to remain a Commission licensee. In this connection we must emphasize first that factual findings by the presiding officer, who saw and heard the witnesses and is therefore in a better position to evaluate their demeanor and to judge their credibility, are entitled to great weight.[7] The presiding officer in this case recognized that it is essential to determine whether misstatements to the Commission were calculated or inadvertent,[8] and he found that they were inadvertent. The critical question here, therefore, is not merely whether some record support exists for a contrary finding but whether the Hearing Examiner's determination is a reasonable one in light of the evidence adduced at the hearing and within his discretionary province. A brief resume of the undisputed evidence upon which the Examiner relied will demonstrate, in our view, that no sufficient basis exists for disturbing his findings and conclusions.

7. In the course of the Commission's field investigation, the station's general manager was interviewed and station records were examined. Thereafter, the Commission requested additional information and, in response thereto, Bluegrass submitted a letter under date of May 31, 1968, signed by H. Hart Hagan, Jr., a 3 percent stockholder and then vice-president of Bluegrass.[9] This statement contained several factual inaccuracies.[10] Pursuant to a subsequent request from the Commission, the licensee obtained an affidavit from Mr. Webb, who previously had been removed from his position as general manager, and forwarded the affidavit to the Commission without comment on June 25, 1968. Mr. Webb's affidavit contained a number of false statements which

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[5] With respect to the issue of programming which had been added by the Review Board, the Examiner concluded that the station had "an excellent record of providing meritorious public service programs."

[6] The Examiner indicated that he would have imposed a monetary forfeiture if the designation order had contained a provision authorizing such a sanction.

[7] See *WEBR, Inc.* v. *F.C.C.*, 136 U.S. App. D.C. 316, 420 F. 2d 158 (1969).

[8] *Cf.* for instance, the following cases where the Commission refused to disqualify applicants for misstatements of facts where there was no intent to deceive or mislead: *City Cabs, Inc.* v. *F.C.C.*, 107 U.S. App. D.C. 136, 275 F. 2d 165 (1960); and *Beaman Advertising, Inc.*, 1 FCC 2d 28 (1965), review denied, 1 FCC 2d 1612. Moreover, see 2 Wigmore, *Evidence* § 321 (3d. ed. 1940), wherein it is stated that, "In a false representation or pretence, there is involved—alike in all the varieties of offence, and in most civil cases as well as in criminal cases—the general notion of intent to deceive."

[9] Mr. Hagan subsequently became president of the licensee.

[10] The inaccuracies concerned the character and extent of the investigation which was conducted by Bluegrass in response to the Commission's request for further information.

were made in order to conceal his responsibility for the fraudulent billings. The controversy as to whether the licensee should be charged with deliberate misrepresentations or with a lack of candor centers around Webb's statements and the May 31, 1968 letter.

8. The fraudulent billings and other violations at WVLK in 1967 were committed by the station's general manager, George Webb. And, to a considerable extent, the misrepresentations charged against the licensee resulted from the substantial reliance placed upon Mr. Webb by the licensee, a reliance which proved to be unwarranted. However, the record established that Mr. Webb was a trusted employee of Bluegrass who has held responsible positions at the station since 1954. Prior to the 1967 acts of misconduct nothing had occurred which would cause the top management of the licensee to question the general manager's honesty or integrity. No complaints were received from any advertiser concerning the billing procedures at the station. Moreover, it appears that Mr. Webb misled his employers as to the true facts in an effort to absolve himself from responsibility for the misdeeds which had taken place and this introduced an element of confusion into the licensee's investigation. In this setting we cannot say that the Examiner erred in holding that "the aberrational acts on the part of Mr. Webb . . . could not reasonably have been expected, as they were so contrary to his performance during his many years past experience at the station."

9. Other facts and circumstances established by this record serve to reinforce the Examiner's view that Bluegrass did not intend to mislead or deceive the Commission. While the May 31, 1968 letter contained some erroneous statements, the licensee made no attempt to conceal the fraudulent billing and, in fact, admitted that irregularities in the billing of advertisers had occurred.[11] Full restitution was made for the overcharges. Mr. Webb and the president of Bluegrass, Mr. Grizzard, who was also responsible for day-to-day operations at the station, were removed from their managerial positions and were replaced by other management personnel. In order further to insure that there would be no recurrence of any improper billing practices, a new logging and billing system was installed, and the billing operations were closely supervised on a monthly basis by top management personnel. Many of these activities took place just prior to and during the period that the May 31, 1968 response to the Commission was being prepared. In view of this evidence and the additional mitigating circumstances detailed in the Initial Decision, we are not prepared to say that the Examiner was unjustified in finding that any misstatements by Bluegrass were "mere inadvertences" which resulted from

[11] Hagan and other officials of Bluegrass who conducted the investigation of the station testified that, once they determined that advertisers had been overbilled at the station, they concentrated their efforts on determining the amount of overbilling, on making restitution to advertisers who were overbilled, and on taking other immediate steps to rectify the situation. Further, testimony was offered to the effect that some of the station's records relating to the billing practices at the station were destroyed; that the station logs and advertising invoices were retained by the Commission during the time of Bluegrass's investigation of the station and that these voluminous documents were not returned to Bluegrass until shortly before it was required to respond to the Commission inquiry; that as a result, a detailed study of these documents verifying the billing of advertisers at WVLK could not be completed and, indeed, was not completed until after Hagan's written report; and that since Hagan admitted in his report to the Commission that advertisers were overbilled and that the billing procedures at the station had broken down and were replaced by a new system and by installing new management personnel at the station, there was no need to go into the details of the hows and whys of such overbilling.

"carelessness or preoccupation with other matters," and that it possesses the requisite character qualifications to continue as a Commission licensee.

10. Although Bluegrass was derelict in the discharge of its supervisory responsibilities as a broadcast licensee—and the irregularities at WVLK and the erroneous statements to the Commission could probably have been avoided if the licensee had been more vigilant—we are in agreement with the Examiner that circumstances have been shown which justify a lesser sanction than denial of renewal. Thus, the billing system, which was used by the prior owner as well, had been in operation for about 20 years with no adverse consequences. Several of the personnel charged with the responsibility for station operations were long term employees who had demonstrated their competence and, as the Examiner held, "the licensee justifiably came to have confidence in them." In addition, the record establishes that during the period of its stewardship, the licensee instituted a number of procedures which demonstrated an attentiveness to its licensee responsibilities. We note, for instance, that it established within its corporate structure appropriate lines of authority for supervising the general operations of the station which it expected would keep the responsible officials of Bluegrass informed thereof; and that it engaged on a full time basis the services of a consulting engineer and legal communications counsel who, among other things, have regularly met with and advised both the station's operating personnel and the responsible officials of Bluegrass of important station matters. These factors do not, of course, excuse the negligent failure of Bluegrass to exercise that degree of supervision and control which is required of Commission licensees. However, in determining the extent to which Bluegrass failed to exercise adequate control and supervision over station operations and the appropriate sanction which is called for, we believe that these matters may properly be taken into account.

11. The Bureau further argues that the Examiner's disposition is contrary to Commission precedent, relying primarily upon *Continental Broadcasting, Inc.*, 15 FCC 2d 120 (1968), reconsideration denied 17 FCC 2d 485 (1969).[12] However, we find the cited cases to be clearly distinguishable. In *Continental* there was an almost total and inexcusable abdication of licensee supervision and control over day-to-day station operations, and the deficiencies of Bluegrass cannot be equated to such derelictions either as to type or degree. Moreover, in *Continental*, the licensee was responsible for willful and deliberate misrepresentations of material facts, whereas in the case under consideration the Examiner found that Bluegrass was guilty only of carelessness and inadvertent misstatements and we have affirmed that finding. With respect to the other cases cited by the Bureau, like substantial factual distinctions exist both as to the nature of the misconduct charged and the degree of licensee culpability therefor which make them inapplicable to the case under consideration.

[12] Other cases relied upon are: *Eleven Ten Broadcasting Corp.* (KRLA), 32 FCC 706, reconsideration denied 33 FCC 92, affirmed *sub. nom. Immaculate Conception Church of Los Angeles, et al.* v. *F.C.C.*, 320 F2d 785, cert. denied 375 U.S. 904; and *KWK Radio, Inc.*, 34 FCC 1039, affirmed 337 F2d 540, cert. denied 380 U.S. 910.

12. For the above reasons, we find no merit to the Bureau's arguments on this appeal. Based on our review of the entire record in this proceeding, we are satisfied that the Hearing Examiner's Initial Decision should be affirmed since it represents a fair and reasonable recapitulation of the record evidence and arrives at appropriate conclusions based thereon. We believe, as did the Hearing Examiner, that a short-term license for Station WVLK is a sufficient sanction under the facts and circumstances of this case. Furthermore, a one year renewal will afford this Commission an early opportunity to review the operations of that station. Since the last renewal date for regular broadcast licenses in Kentucky was August 1, 1973, we shall authorize a renewal for a period of one year from that date.

13. Accordingly, IT IS ORDERED, That the application of Bluegrass Broadcasting Co., Inc. for renewal of license for Station WVLK at Lexington, Kentucky, IS GRANTED for a short-term period ending August 1, 1974.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Exceptions of the Chief, Broadcast Bureau, to the Initial Decision

Exception No.	*Ruling*
1–18	*Denied.* The Hearing Examiner's findings adequately reflect the evidence of record.
19–23	*Denied.* The Hearing Examiner's ultimate findings represent a fair and reasonable recapitulation of the evidence of record and his conclusions are correctly based thereon.

Exceptions of Bluegrass Broadcasting Co., Inc.

2*–53	*Denied.* The Hearing Examiner's findings adequately reflect the evidence of record.
54–62	*Denied.* The Hearing Examiner's ultimate findings represent a fair and reasonable recapitulation of the evidence of record and his conclusions are correctly based thereon.

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

Contrary to the majority's position, I cannot agree that grant of the renewal application of Bluegrass Broadcasting Company, Inc., for Station WVLK in Lexington, Kentucky, even for a short-term period, would serve the public interest. The record evidence in this proceeding clearly establishes that WVLK engaged in fraudulent billing practices during several months in 1967; that WVLK did not operate in conformance with prior proposals concerning commercial time standards and public service announcements; that the station's program logs were falsified on numerous occasions; that many logging infractions were committed at WVLK; and that certain oral and written statements submitted to the Commission by officials and/or employees of Bluegrass contained material misrepresentations and

*Paragraphs 1 and 4 of Bluegrass's Statement in Support of Initial Decision are not exceptions to the Initial Decision.

were lacking in candor. In effect, the evidence conclusively shows that Bluegrass was derelict in the degree of responsibility, control and supervision which it exercised over station operation during the period in question in this proceeding. Therefore, the ultimate question posed on appeal of the Administrative Law Judge's Initial Decision is not whether the record evidence supports the charges against Bluegrass, but, rather, whether the corporate, multiple broadcast licensee [1] should be permitted to escape full responsibility for the improper operation of WVLK over an extended period of time on the ground that the general manager in charge of daily station operations engaged in aberrational conduct unbeknown to Bluegrass principals.[2]

The majority concludes that even though Bluegrass "was derelict in the discharge of its supervisory responsibilities as a broadcast licensee—and the irregularities at WVLK and the erroneous statements to the Commission could probably have been avoided if the licensee had been more vigilant," the appropriate sanction to be imposed here is short-term renewal of license. I cannot join in the majority's decision for I am persuaded that there is compelling record evidence in this proceeding which demonstrates severe shortcomings in the WVLK operation under Bluegrass stewardship, which establishes serious misconduct on the part of principals and employees of the licensee in dealing with the Commission and which clearly militates against a finding that grant of the renewal application, even for a short-term period, would be in the public interest. For example, the record indicates that the licensee deviated substantially from representations set forth in past renewal applications concerning commercial time standards. In its 1964 renewal application, Bluegrass represented that there would be no substantial change in the number of commercial spot announcements from that carried during the 1963 composite week; that the station would average less than 10 commercial spots per hour and in no event would exceed an average of 12 spots per hour; and that, during peak sales periods,[3] WVLK would not exceed a maximum of 20 commercial spots and that it would not exceed a maximum of 14 spots per hour in other time periods. Nevertheless, WVLK program data for the 1963–1966 composite weeks indicate that although the average number of commercial spots per hour was less than 10 during this period, as represented, the maximum limit of 14 spots per hour was exceeded 28% of the time in 1963, 32% of the time in 1964,

[1] WVLK went on the air in 1947, and Bluegrass has always been the corporate licensee. However, in 1952, a majority of the Bluegrass stock was acquired by a group headed by Garvice D. Kincaid, whose individual ownership interest subsequently increased to 77%. Bluegrass is also the licensee of Station WVLK–FM in Lexington, and subsidiary companies are licensees of Station WHOO–AM–FM in Orlando, Florida, and Station WFFG in Marathon, Florida.

[2] Immediately prior to the fraudulent billing practices at WVLK, a number of personnel changes occurred at the station. Ralph Worster, who had been retained by Kincaid in 1953 to manage his business activities, including broadcasting, and who had also become president, director and 15% stockholder of Bluegrass and head of General Management Associates (GMA)—a management firm charged with general supervisory control over WVLK, retired from Bluegrass and GMA in 1966. Thereafter, Ted Grizzard, a 2% stockholder and then general manager of WVLK, replaced Worster as president of Bluegrass, and H. Hart Hagan, Jr., replaced Worster as head of GMA. George Webb, a 2% stockholder and station sales manager, succeeded to the general managership and also became a vice president of Bluegrass. As general manager, Webb was responsible for daily station operation and served in such capacity when WVLK overbilled its advertisers. He died on August 28, 1973.

[3] Bluegrass defined peak sales periods as automobile traffic times in the morning and afternoon, desirable advertising days of the week (usually Thursday and Friday) and special advertising periods such as Christmas and political campaigns.

31% of the time in 1965 and 36% of the time in 1966. In peak sales periods, the promised maximum of 20 spots was exceeded 6% of the time in 1963, 8% of the time in 1964, 3% of the time in 1965 and 9% of the time in 1966.

In its 1967 renewal application and in response to a Commission inquiry in late 1966, Bluegrass represented that the absolute maximum of commmercial matter permitted per hour would be 24 minutes and that commercial time would not exceed 30% of total broadcast time in any week.[4] In actual operation, however, as disclosed by WVLK's 1967 composite week data, commercial matter exceeded 24 minutes 13% of the time and, during the hours from 6 a.m. to 6 p.m., the limit was exceeded 25% of the time. The percentage of commercial time per week during all hours was 25.7% and between 6 a.m. and 6 p.m. was 32.9%. During June and July of 1967, the proposed ceiling of 24 minutes was exceeded 11% and 9% of the time, respectively. These deviations in commercial time standards can only be characterized as substantial and serious, especially when it is recognized that the self-imposed limits were high to begin with, at least by NAB Code standards, and when it is noted that WVLK had developed a sold-out condition in the early 1960's so that the station could only accommodate advertiser demands by exceeding its commercial time representations. Moreover, the subsequent revision of WVLK time policies to conform to NAB Radio Code standards cannot mitigate the impact of the deviations since the revision only occurred *after* initiation of the Commission's inquiry into station operations.

The hearing record also indicates that Bluegrass failed to conform its operation to proposals regarding public service announcements. In preparing the WVLK 1964 renewal application, an analysis of the 1963 composite week revealed that less than half of the 250 PSA's promised in the previous renewal application had actually been broadcast. As a result, WVLK's counsel suggested that the station set up the following minimum PSA schedule:

	Per week	Average per hour
8 a.m. to 6 p.m.	70	1
6 p.m. to 11 p.m.	70	2
All other hours	110	3
Total	250	

Bluegrass advised its counsel on April 16, 1964, that it was effectuating his suggestion immediately even though it felt that PSA's broadcast between midnight and 6 a.m. would have little impact. In none of the subsequent years did the weekly PSA total approach 250 so that counsel's advice was not implemented. And although the record shows that PSA's broadcast by WVLK did increase from 116 in 1964 to 191 in 1966, the number broadcast between 8 a.m. and 6 p.m. declined while PSA's broadcast between 11 p.m. and 8 a.m. increased. On a

[4] Bluegrass did not adopt the National Association of Broadcasters' Code, which recommends a maximum of 18 commercial minutes per hour, until after this proceeding was initiated.

percentage basis, the PSA's presented during the 8 a.m. to 6 p.m. time period declined from a promised 62% to 26% while those broadcast during the 11 p.m. to 8 a.m. time period increased from a promised 15% to 60%.

In its 1967 renewal application, Bluegrass proposed no substantial change in its PSA policy from that reflected in its 1966 composite week when 191 announcements were broadcast. However, according to composite week figures, WVLK broadcast only 97 PSA's in 1967. Moreover, an analysis of program logs for the month of June, 1967 (approximately one month after the station filed its license renewal application) revealed that the station had broadcast only 4 PSA's between 6 a.m. and 6 p.m., some 40 PSA's between 6 p.m. and 11 p.m. and as much as 219 PSA's between 11 p.m. and 6 a.m. Therefore, it is more than apparent from the hearing record that the licensee did not conform its operation to proposals regarding PSA's contained in renewal applications, that Bluegrass failed to heed the advice of its counsel about PSA policy in 1964 and that PSA's were placed in late night-early morning time periods with the knowledge that such practice minimized their effectiveness. Apparently, neither GMA nor anyone else representing the licensee's controlling ownership employed independent checks or supervisory controls over station operation except in regard to financial matters. Operational responsibility was effectively left to Webb and Grizzard and particularly Webb after he became general manager in February, 1966.

The record evidence also reveals that WVLK's program logs were falsified on six days in August, 1967. The log falsification occurred after the Commission's rescission on July 24, 1967, of WVLK's license renewal [5] and after licensee's counsel had advised Webb to adhere to the limit of 24 commercial minutes per hour promised in the renewal application. Instead, Webb directed the station's salesmen to sell 40-second spot announcements (instead of 60-second announcements) to local advertisers, and, without waiting for new contracts and sales orders, he instructed the traffic department to change WVLK's program logs to reflect 40-second rather than 60-second spots for all local accounts. During the six-day period, 836 false log entries were made, ranging from 125 to 188 per day, and, as the Law Judge below concluded, the log falsification was a direct result of the conduct of Webb, who was then an officer and stockholder of Bluegrass. The Judge also found that, during the periods June 12–18 and July 10–16, 1967, WVLK committed some 1,098 and 668 logging violations, respectively, including failure to show length of commercial message, to identify announcements as commercial, to identify sponsors of PSA's, to log station identification and to initial log corrections.

In addition, the record evidence clearly shows that from March to September of 1967, WVLK overbilled its advertisers in the amount of $36,000, of which $2,100 represented advertising broadcast at a time other than that contracted for and the balance represented advertising

[5] Bluegrass filed its renewal application on April 28, 1967, which was granted. However, information disclosed by the field investigation into the WVLK operation raised serious questions concerning Bluegrass' qualifications to remain a licensee, and the Commission rescinded the grant on July 24, 1967, and, thereafter, designated the renewal application for hearing.

never broadcast, and that the overbilling was directly attributable to the wrongful acts of George Webb, the station's general manager. As the Trial Judge found below, WVLK initiated the billing process from the sales contract or sales order rather than from the program log, which procedure required the maintenance of a record of advertising not broadcast within the relevant billing period. At WVLK, this record was known as the "short list," and it came into use when the station began to experience a sold-out condition in the early 1960's. The short list consisted of commercials that could not be accommodated on a particular day, but which were supposed to be broadcast the following day or at least by the weekend. According to the hearing record, the station's traffic girl prepared the program log, scheduled advertising thereon up to a specified limit per hour and placed any excess on the short list. The program log and the short list were then given to Webb who would attempt to schedule all commercial spots sold for that day on the log. In the process, he moved around spots already scheduled and crossed off spots to accommodate those from the short list. The crossed-off spots were to be added to the short list; however, Webb kept no record of the spots deleted and he did not add them to the short list. He apparently relied on his memory to make good for the deleted spots at al later date, but his memory was inadequate in this regard since advertisers were overbilled in the amount of $36,000. The Commission's field investigation confirmed the fact that the overbilling was caused by Webb's failure to make good on deleted spots and because advertising bills and affidavits of performance were prepared from sales orders instead of program logs.[6]

On March 20, 1968, the Commission advised Bluegrass of the results of its field investigation and requested an explanation of WVLK's billing procedures. Bluegrass filed an initial response on May 31, 1968, through H. Hart Hagan, Jr., vice president of Bluegrass. Hagan represented that he and "others" had reviewed station records and had discussed WVLK billing procedures with Webb and the traffic girl; that his review indicated that the traffic girl (Mrs. Golden) and the bookkeeper [7] were supposed to check the program log and short list in order to revise advertising bills and affidavits of performance; that such procedures apparently were rarely followed at the station since no billing adjustments had been made; that he and other Bluegrass officials were aware of the station's advertising situation, but were not aware that advertisers were not receiving contracted-for broadcast time or that erroneous invoices were being used; that it is "difficult to ascertain the extent to which the fault lies with Mr. Webb, Mrs. Hens-

[6] Each member of the ownership group of WVLK testified at the hearing that he was not aware of the overbilling of advertisers. Kincaid stated that he had never heard any complaints about overbilling of advertising accounts, that he first heard about the matter when the Commission investigation took place in 1967 and that he had instructed Mr. Hagan to investigate and to take necessary corrective action. The record shows that Bluegrass instituted the following measures in October, 1967, to avoid future overbilling: (1) it began billing directly from station logs rather than sales contracts; (2) it installed a computerized logging and billing system; (3) it relieved Webb and Grizzard of all managerial responsibility; and (4) it initiated a procedure to check on the accuracy of WVLK's billing process. The evidence also indicates that Bluegrass made restitution to the advertisers who were overbilled in 1967.

[7] This proceeding had its origin in a complaint received by the Commission from a former employee of Bluegrass, who charged that the station had engaged in the fraudulent billing of advertisers. In August of 1967, Sara Hensley discontinued her employment with WVLK after 18 years as station bookkeeper. Shortly thereafter, she filed the above-mentioned informal complaint with the Commission.

ley and/or Mrs. Golden or the extent to which those practices were the product of carelessness or were intentional"; and that serious practices were permitted to occur in a phase of station operation for which the licensee looked to Webb as the responsible official.

Since the licensee's initial response did not include an attesting affidavit from an official with knowledge of WVLK billing procedures, the Commission's staff made an appropriate oral request, and, by letter of June 25, 1968, the licensee submitted a statement by Webb *without comment*. In his statement, Webb attempted to place responsibility for the overbilling on the traffic girl and the bookkeeper; however, his explanation failed to deal with his deletion of commercial spots and with the fact that these spots were never broadcast by WVLK. In effect, Webb's statement did not reflect the true situation that existed at WVLK with respect to overbilling. In a petition for reconsideration of the designation Order, Bluegrass admitted that Webb's statement was false, but explained that Hagan had not known at the time he forwarded Webb's statement to the Commission that it was false. The licensee also explained that any inaccuracies in Hagan's earlier statement were the result of information received from Webb during the course of Hagan's investigation of station operation. Thereafter, Bluegrass submitted a Hagan affidavit, dated September 4, 1967, which recited that Hagan, John F. Clines, Hagan's assistant at GMA, and Gene A. Bechtel, WVLK counsel, had conducted a detailed investigation of the station as requested by the Commission, that they had interviewed Webb and Mrs. Golden and that Webb had misled all of them.

At the hearing, Hagan testified that he had relied primarily on Webb for the information contained in the former's May 31, 1968 statement to the Commission. He also stated that it was Clines who had interviewed the traffic girl and not he (Hagan); that he had not seen the short list himself (and that, if he had, it would have alerted him to the fact that Webb was giving false information); that, during his investigation, he talked only in a general way with station personnel and that detailed interviews were conducted either by Clines or Bechtel; that, contrary to his May 31, 1968, statement, he had not seen any memo from Webb to the traffic girl and bookkeeper, instructing them to check program logs before billing advertisers and to make good for deleted commercials; and that, instead of attempting to determine what the billing procedures were and who was responsible for the overbilling, he first concentrated upon a plan to institute restitution to advertisers and to establish new billing procedures.

This brief recitation of record evidence is sufficient to demonstrate a serious lack of candor by Bluegrass principals. Webb's statement contained deliberate misrepresentations made with the intent to mislead the Commission and to cover his misdeeds at WVLK. Hagan's candor is called into question on several counts. Even though he asserted in his May 31, 1968, statement that he had determined that the traffic girl was directly responsible for the overbilling, he subsequently admitted that he had not even interviewed her and that he had had doubts about Webb's truthfulness even before he submitted his statement. Moreover, he failed to reveal in his May 31, 1968, response to the Commission that Webb's statement was not being submitted be-

cause he did not believe that Webb could be given credence—an explanation which he advanced for the first time on September 4, 1969, in connection with the licensee's petition for reconsideration. Also, by letter of June 25, 1968, he submitted Webb's statement *without comment*, failing to reveal that he had reason to believe that Webb's statement contained falsehoods. His failure in this regard is seriously aggravated by the fact that Webb's statement substantially accorded with Hagan's earlier representations to the Commission. The candid approach, of course, would have been to apprise the Commission of his (Hagan's) doubts about Webb.

Therefore, the hearing record demonstrates that there was an abdication of licensee responsibility by Bluegrass during the period in question. In essence, the licensee's principal stockholder, Garvice Kincaid, delegated to GMA all supervisory functions over the WVLK operation, and his role was basically that of an absentee owner who hired a professional management team in whom he entrusted all functions of station management. Unfortunately, GMA concerned itself primarily with the financial aspects of station operation, and responsibility for daily decisions of a broadcast nature was delegated to Grizzard and Webb without any effective supervision of their activities. No procedures were established by Kincaid or GMA to apprise themselves of broadcast matters at WVLK, and even though Bluegrass retained communications counsel, his advice was ignored with impunity.[8] Since neither Kincaid nor GMA retained any effective supervisory control over daily station operation, Bluegrass must be faulted not only for the misconduct of those principals in whom it entrusted full responsibility for station management, but also for its failure to exercise reasonable supervision over WVLK affairs. See *Eleven Ten Broadcasting Corp.*, 32 FCC 706 (1962), affirmed *sub. nom. Immaculate Conception Church of Los Angeles* v. *F.C.C.*, 116 U.S. App. D.C. 73, 320 F. 2d 795, *cert. denied*, 375 U.S. 904 (1963); *Continental Broadcasting, Inc.* v. *F.C.C.*, 142 U.S. App. D.C. 70, 439 F. 2d 580, *cert. denied*, 403 U.S. 905 (1971).

I cannot agree with the majority that the past stewardship of WVLK by Bluegrass mitigates the serious misconduct found here or that the licensee "was guilty only of carelessness and inadvertent misstatements."[9] I am very concerned about the majority's decision, as I was in *Western Connecticut Broadcasting Company*, FCC 73–1074, released November 7, 1973, since it appears to represent a major departure from the traditionally strict standards of candor and honesty imposed on Commission licensees. *WPRY Radio Broadcasters, Inc.*, 40 FCC 2d 1183 (1973); *Milton Broadcasting Co.*, 34 FCC 2d 1036

[8] Counsel for Bluegrass advised the licensee of the Commission's serious concern over fraudulent billing practices and the adoption of rules governing fraudulent billing by stations in letters, dated December 19, 1963, April 15, 1964, and November 15, 1965. Moreover, as noted above, counsel made suggestions about the station's commercial time and PSA policies.

[9] The majority stresses the importance of the Trial Judge's observation of the witnesses' demeanor in determining whether the misstatements to the Commission were intentional or not. However, I fail to see how the Judge's assessment of demeanor is relevant to a determination of whether Webb and/or Hagan deliberately deceived the Commission in their pre-hearing representations, especially since Webb was not even called to testify at the hearing and since the Judge concluded that Webb's written statement constituted an intentional misrepresentation and that Hagan's May 31, 1968, response contained major inaccuracies.

(1972), affirmed, Case No. 72–1583, D.C. Cir., January 30, 1973; *Continental Broadcasting, Inc., supra.* I am also concerned that the decision may be interpreted to permit a more lax attitude about station management by absentee ownership—a position which is inconsistent with prior precedent (see *Continental Broadcasting, Inc.*, 15 FCC 2d at 131) and which should be rejected by the Commission. The form of the licensee entity should not determine the scope of licensee responsibility in any case. Therefore, I must dissent.

F.C.C. 71D-75

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of BLUEGRASS BROADCASTING CO., INC., LEXINGTON, KY. For Renewal of License of Standard Broadcast Station WVLK, Lexington, Ky.	Docket No. 18285 File No. BR-1953

APPEARANCES

Harry M. Plotkin, *Gene A. Bechtel* and *Thomas Schattenfield* (Arent, Fox, Kintner, Plotkin & Kahn) on behalf of Bluegrass Broadcasting Co., Inc.; and *Richard M. Riehl* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Issued October 20, 1971; Released October 22, 1971)

PRELIMINARY STATEMENT

1. By order released August 5, 1968, the Commission designated the license renewal application of standard broadcast station WVLK, Lexington, Kentucky, for hearing on the following issues:

(1) To determine the extent to which the applicant herein has engaged in fraudulent billing practices.

(2) To determine whether the applicant misrepresented its policy on commercial time standards.

(3) To determine whether in written or oral statements to the Commission the applicant or its agents, employees or representatives misrepresented facts to the Commission or were lacking in candor.

(4) To determine whether the applicant falsified its program logs during August 1967.

(5) To determine whether the applicant violated Sections 73.111 and 73.112 of the Commission's Rules.

(6) To determine whether the applicant conformed to its proposals regarding public service announcements.

(7) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the applicant herein has exercised reasonable licensee responsibility in the mangement of the station, and possesses the requisite qualifications to continue to be a licensee of the Commission.

(8) To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application for renewal of the license of Station WVLK would serve the public interest, convenience and necessity.

2. On October 15, 1968, the Review Board, at the request of the applicant, added the following issue:

To determine whether the programming of WVLK, Lexington, Kentucky, has been meritorious, particularly with regard to public service programs.

3. On August 23, 1968, the Broadcast Bureau issued a Bill of Particulars as directed by the designation order. Prehearing conferences were held on September 20 and October 23, 1968, January 21, 1969 and June 5, 1970. The evidentiary hearing did not commence until August 1970. The delay in commencement was occasioned by the need, under the fraudulent billing issue, to do a complete analysis of the station's billings and logs for the years 1965 and 1966. Following the completion of this analysis, a petition for reconsideration of the designation order was filed on September 15, 1969, which was denied on June 2, 1970, and in the same order the Commission denied a prior request for inclusion of a forfeiture issue. In denying the petition for reconsideration, the Commission, *sua sponte*, revised issues (7) and (8) above to read as follows:

(7) To determine whether the applicant herein has exercised reasonable licensee responsibility in the management of the station.

(8) To determine whether the applicant herein possesses the requisite qualifications to continue to be a licensee of the Commission.

(9) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application for renewal of the license of Station WVLK would serve the public interest, convenience and necessity.

4. Evidentiary hearing sessions were held on August 25–28 and October 26 and 27, 1970. On November 19, 1970 the record was closed; but it has since been twice reopened for limited purposes and immediately closed, the last such closing occurring on April 20, 1971. Proposed findings and conclusions were filed on June 7, 1971 and reply findings and conclusions were filed on July 6, 1971.

FINDINGS OF FACT

Background

5. WVLK went on the air in 1947, and was acquired by a group headed by Garvice D. Kincaid in 1952. Mr. Kincaid owns 77% of the stock of Bluegrass Broadcasting Co. and is a director. George Webb and Ted Grizzard, the officers of Bluegrass responsible for the day-to-day operation of WVLK in 1967, began with Mr. Kincaid in 1952. Mr. Grizzard was the general manager and Mr. Webb became sales manager in 1954. By 1964, when the last previous renewal application was filed, both were vice presidents of Bluegrass and each owned 2% of the company's stock. Mr. Grizzard was responsible for the day-to-day operations of the station.

6. In February 1966, Mr. Webb assumed the position of general manager, although Mr. Grizzard remained at the station. At the time WVLK's 1967 renewal application was filed, Mr. Grizzard had been elevated to President of Bluegrass and a director, and he and Mr. Webb were co-responsible for the day-to-day operations of KVLK. In all other respects their respective corporate positions remained unchanged. The responsibilities of Mr. Webb remained unchanged until about June 1968 when both men were required to resign their positions with Bluegrass and their managerial and supervisory positions at WVLK.

7. Also in 1952, Mr. Ralph Worster joined the Kincaid organization and formed General Management Associates (GMA) which per-

formed management, accounting and tax services for various Kincaid enterprises, including Bluegrass Broadcasting Co., the licensee. Mr. Worster was named president and director of Bluegrass in 1960 and held that position until February 1967. He continues to hold 15% of the Bluegrass stock. Mr. Worster's office, on instructions from Mr. Kincaid, had general supervisory responsibility, as distinct from day-to-day operational responsibility, over WVLK.

8. Hart Hagan, a certified public accountant, who assumed the presidency of Bluegrass upon the resignation of Mr. Grizzard in 1968, joined Mr. Worster at GMA in 1960 and by 1967 was a vice president and director of Bluegrass. He owns 3% of that company's stock. John F. Clines joined GMA in September 1966 following the illness of Mr. Worster, working as assistant to Mr. Hagan. He is presently secretary-treasurer of Bluegrass. As the findings will reflect hereinafter in more detail, these men represented the licensee in one form or another and were, or were supposed to be, responsible for the operation of WVLK and its conduct during the period encompassed by the issues.

9. A retainer arrangement with communications counsel was made in 1960 upon the recommendation of Mr. Worster. He testified that the idea was for station personnel such as program directors, station managers and chief engineers to feel free to talk directly with Washington counsel at any time. Washington counsel stated that as a rule there have been many communications each month with station and licensee personnel, that during the period from 1960 to 1967 more than 20 trips were made to Lexington to work on FCC matters there, and that during this seven-year period more than 75 letters were issued regarding new developments in Commission rules and policies. Mr. Worster testified that his practice with respect to such letters was to review them by telephone with Washington counsel and with station personnel. The procedure for renewal applications was for Washington counsel to work with station personnel in Lexington to develop the various statistics, representations and other information required and then review these materials and any problems that might be involved in a conference with Mr. Worster.

10. *Other Station Personnel.* In connection with the hearing issues, it will be helpful to identify the following station employees. *Sara Hensley* was employed as the bookkeeper at Station WVLK from 1948 until 1967. She was highly regarded by the organization and was used to train bookkeepers at other radio stations in the Bluegrass chain. She left Station WVLK in August 1967 in an unhappy state. *Rebecca Golden* was the traffic girl at Station WVLK from November 1966 to May 1968 encompassing the seven-month period in 1967 when the events in question took place. *William L. Stakelin* was the program director at Station WVLK during this period of time. Mr. Stakelin, age 28, joined Station WVLK in 1966 as an air personality. He is a graduate of Georgetown College (Kentucky) and had eight years of program experience at Station WAXU in Georgetown. Mrs. Golden and Mr. Stakelin testified at the hearing.

11. Bluegrass Broadcasting Co., Inc. has been the licensee of Station WVLK since the station was constructed and placed on the air in 1947, as has been noted hereinbefore. Bluegrass is also the licensee of Station

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WVLK–FM, which was constructed and placed on the air in 1961. An affiliated company is the licensee of Station WKYT–TV in Lexington, which was purchased in 1967. Subsidiary companies are the licensees of Station WINN, Louisville, Kentucky (purchased in 1962), Stations WHOO–AM–FM, Orlando, Florida (purchased in 1958) and Station WFFG, Marathon, Florida (purchased in 1964).

12. The years 1966 and 1967 were unusually busy periods for Bluegrass with a number of projects and developments occupying the attention of Mr. Kincaid and those in his immediate office. An application for construction permit for a new television station in Lexington had been designated for a comparative hearing in June 1966 and the hearing exhibits were exchanged in November 1966. Then, in January 1967 a contract was signed for the purchase of Station WKYT–TV in Lexington, as noted in the preceding paragraph, and the application for construction permit was dismissed. In June 1967 closing was held on the purchase of Station WKYT–TV and the organization commenced operation of the station, its first experience in the television field. There were operating problems at the radio stations in Orlando and Louisville resulting in changes in the managers of both stations. During the year 1966 these stations suffered a combined operating deficit in the amount of $87,000. During the year 1967 the combined operating deficit was $285,000. The change in managers took place in January 1967 in Orlando and in April 1967 in Louisville. And construction of the new 50,000 watt facility in Orlando was in progress. The record also discloses that Mr. Worster suffered a leg injury in the fall of 1966 that prevented him from devoting full time to his duties. In November 1966 he resigned but remained active in the company until February 1967 when Mr. Hagan assumed his duties. The events in question at WVLK took place approximately during the transition from Mr. Worster to Mr. Hagan.

Issue 1—Fraudulent Billing

13. This issue requires that the extent to which Bluegrass engaged in fraudulent billing practices be determined. The charge that Station WVLK engaged in billing irrregularities was brought to light when two representatives of the Commission arrived at the station on Monday, September 25, 1967. The representatives testified that Mr. Webb was most cooperative and that station personnel and records were made available to them without any reluctance on the part of the licensee. The investigators concluded their field work on Friday, September 29, 1967, taking program logs for a one-year period, invoices and other station records. On October 31, 1967 the Commission sent a telegram asking for additional invoices. These were submitted to the Commission on November 8, 1967. On March 20, 1968 Mr. William B. Ray, on behalf of the Commission, addressed a letter to Bluegrass returning these documents and asking for a study of the accuracy of the billing to all accounts on the station during the period January 1–August 31, 1967. Bluegrass conducted such a study and filed its report with the Commission on May 31, 1968. Bluegrass filed a supplement to this report on June 12, 1968 and, in response to requests by the Commission's staff, submitted a variety of additional information on June 3, June 25, July 9 and July 29, 1968.

14. In connection with Issue No. 1 Bluegrass conducted a computerized or correlation study of the accuracy of the billing of Station WVLK over a period of several years, checking with Bureau counsel regarding study methodology and results. Correlation studies for the years 1965, 1966 and January to September 1967 were performed by the licensee to ascertain the extent of any billing irregularities that might have taken place. The initial studies for January 1 to August 31, 1967 were commenced by the licensee in the spring of 1968 at the request of the Commission, since Commission investigators had taken the program logs for January–August 1967 with them and did not return them to WVLK until March 1968. The results of such correlation studies are set forth below:

1965: WVLK broadcast 93,671 spots, but only billed its accounts for 92,415 for a net minus billing of $8,323.36. This minus discrepancy represents slightly over 1% of the spots and less than 2% of the dollar volume of $456,039.39.

Month	1966 Plus (minus) discrepancy		1967 Plus (minus) discrepancy	
	Messages	Dollars	Messages	Dollars
January	(1,223)	$(6,935.63)	(262)	$(1,562.14)
February	(755)	(4,262.08)	(84)	(506.26)
March	(490)	(2,933.84)	215	1,190.96
April	(213)	(1,046.41)	545	2,624.44
May	288	1,357.31	1,365	6,511.97
June	490	2,390.45	1,422	6,862.53
July	584	2,882.90	1,648	8,000.25
August	(17)	(85.88)	911	4,466.50
September	351	1,795.56	819	4,365.61
October	(128)	722.21		
November	(486)	(2,679.30)		
December	429	2,403.12		
Net discrepancy	(1,170)	(7,835.98)	6,579	31,953.86
Total overbilling	2,142	11,551.58	6,925	34,022.26
1967 spots run outside time limits of contract				2,100.00
Total overbilling (1967)				36,122.26

15. The record shows that in 1966, as in 1965, the number of advertising messages logged actually exceeded the number of messages billed and that the discrepancies between the logs and invoices, both in terms of the number of messages and the dollar volume, are within the 1% to 2% margin of error which the computer personnel indicated should be allowed for a project of this nature. The correlation studies further show that during 1966 WVLK billed all accounts for a total of 97,217 spots with a total dollar volume of $512,639.62, while logging 98,387 spots, and that during the nine months of 1967 WVLK billed all accounts for a total of 86,207 spots with a dollar volume of $446,293.99, or at an annual rate of $595,058.66, while only broadcasting 79,628 spots.

16. These computerized studies show that during the period January through September 1967, commencing in the month of March, a total of 148 advertisers on Station WVLK were overbilled in the amount of $36,122.26. Bluegrass has made restitution to the advertisers who were overbilled. Of the aggregate amount of $36,122.26 overbilling, $2,100 represents advertising that was broadcast outside the time limits specified in the advertising contracts and the balance represents

advertising that was never broadcast. Overbillings in the amount of $17,759 were to businesses located within the service area of Station WVLK and the balance was to national accounts or other businesses located outside the service area of the station. All three of Mr. Kincaid's businesses which are regular advertisers on the station (Central Bank and Trust Company, Kentucky Finance Company and Lexington Finance Company) were overbilled in the aggregate amount of $1,400. Commencing in October 1967 all accounts were billed directly from the logs rather than the contracts which had been the previous practice.

17. The billing procedure used by WVLK was to initiate the billing process from the sales contract or sales order rather than from the program log, and was in effect when Mr. Worster joined the organization in 1952. Under such a procedure it is necessary to maintain a record of advertising that is not broadcast within the relevant billing or contract period and to adjust the bill accordingly. At Station WVLK this record was known as the "short list." In the early 1960's the station began experiencing a sold-out condition in certain time periods and the short list came into use. The record shows that the short list consisted of items which could not be accommodated on a particular day, and that the most frequently sold out time periods occurred on Thursdays and Fridays. Items from the short list were supposed to be cleared the following day or at the latest by the weekend when the commercial load was lighter. Most of the station's business was "run-of-schedule" advertising suitable for such flexibility in scheduling.

18. Mrs. Rebecca Golden, the traffic girl at Station WVLK from November 1966 until May 1968, testified concerning the nature and use of the short list. Mrs. Golden testified that she scheduled advertising on the logs up to a specified limit per hour. In those instances when she could not accommodate all of the sales for the day, she prepared a list of the advertising which could not be scheduled. Mr. Webb then worked with the log and the accompanying list of unscheduled advertising. Mrs. Golden testified that when she joined Station WVLK in November 1966, there was a short list once or twice a week and Mr. Webb was able to accommodate the advertising from such short lists on the logs. She also testified that there was a noticeable increase in the frequency and size of the short list starting in the spring of 1967, and the "correlation studies" of the program logs and invoices corroborate that a pattern of not fully accommodating numerous sales orders (while issuing the invoices based thereon) was begun in approximately March 1967 and continued until September 1967.

19. Each member of the ownership group testified that he was not aware of the overbilling of advertisers by Station WVLK. Mr. Kincaid testified that he had never heard any complaints, directly or indirectly, about the overbilling of accounts, that he first heard about the matter when the Commission's investigation took place in September 1967 and that he instructed Mr. Hagan to find out what was involved and take such corrective action as might be needed. Mr. Worster testified that he had no knowledge of any overbilling of advertisers, that neither Mrs. Hensley nor anyone else at Station WVLK had ever complained to him that the proper adjustments were not

being made to invoices, that he had never heard of any complaints from advertisers or rumors of billing irregularities, and that he had never had a reason to believe that the billing of accounts at Station WVLK was not being handled properly. Mr. Hagan stated that while he was aware that Station WVLK carried a heavy commercial volume, it was his understanding that the Thursday and Friday short lists were cleared by the weekend and he had no reason to think that any advertiser was not receiving his advertising schedule as contracted for or that erroneous invoices were being issued. Mr. Clines stated that he had no knowledge of any overbilling practices at Station WVLK and that he had never heard of any complaint regarding the matter by a station employee or advertiser.

20. Mr. Worster had discussions with various persons including Mr. Grizzard, Mr. Webb and time salesmen regarding the fact that the station was sold out in certain time periods. As Mr. Worster observed it, a number of persons were involved in dealing with this "problem." Mr. Grizzard was concerned that the station accommodate its advertisers in the best way possible. Mr. Webb personally passed on all sales and was in charge of administration of the short list. The time salesmen were involved since "missed advertising" affected their commissions, and items on the short list were discussed at sales meetings. Traffic personnel prepared the list of advertising which could not be scheduled on a given day's log, and bookkeeping personnel were involved in making the adjustments for advertising which did not run. Mr. Worster testified that with so many personnel at the station affected by, and dealing with, the station's sold-out condition in certain time periods, he had no reason to believe that the attendant short list and billing procedures were not being handled properly. This was particularly so in a community the size of Lexington where station personnel were dealing with merchants they knew on a first name basis. At that time Mr. Worster took a great deal of comfort from the fact that Mr. Webb personally administered the short list. Mr. Webb and the bookkeeper, Mrs. Hensley, between whom coordination was important for the proper functioning of the billing system, had worked together closely for many years.

21. The licensee had seen to it that station management was apprised of Commission rules and policies with respect to billing practices. During the period from 1960 to 1967, Washington counsel on three occasions, the last in November 1965, advised GMA and the station of the Commission's serious concern over the fraudulent billing practices of stations and the fact that new rules had been adopted to enforce the Commission's policy. The last two letters contained a series of examples of these prohibited practices and included among them was one which described precisely the practices for which WVLK now stands charged. Nor was this correspondence regarded by counsel as simply informational. In one he advised GMA that he considered the matter of "immediate significance" and that if it touched on their billing practices to give the matter their immediate attention. In the last letter he again advised that the new rules and attached examples should be studied carefully. Yet the record shows that no checks or supervisory controls over this aspect of WVLK's operations were ever instituted.

22. The record shows that Bluegrass has taken corrective action in the matter as follows: First, it has conducted "correlation studies" of the program logs and invoices to ascertain the amount of the overbilling and has made restitution to the advertisers. Second, it has relieved Mr. Webb and Mr. Grizzard of all managerial responsibilities and installed new management at the station. Third, with the assistance of a consultant in logging and billing systems for radio stations it has installed a sophisticated, computerized logging and billing system with various features and internal checks designed to ensure the accuracy of the billing process. Fourth, a representative of the ownership group (usually Mr. Clines) periodically, at unannounced times, conducts a spot check of the accuracy of the billing process.

Issue 2—Commercial Practices

23. This issue requires a determination as to whether the applicant misrepresented its policy on commercial time standards. The record contains an analysis of the commercial practices of WVLK during the five composite weeks for the years 1963 through 1967. Set forth in the following paragraphs are the representations of Bluegrass regarding commercial policies and practices of Station WVLK, made in the 1964 renewal application, compared with the actual operation of Station WVLK, as revealed in the program logs for the ensuing composite weeks of 1964, 1965 and 1966.

24. Bluegrass proposed no substantial change in the number of commercial spot announcements from that which was broadcast during the 1963 composite week. The comparison is tabulated below:

Time Period	Number of commercial spots			
	1963	1964	1965	1966
8:00 AM–6:00 PM	909	926	1,002	959
6:00 PM–11:00 PM	184	136	141	280
All other hours	312	394	312	323
Total	1,495	1,456	1,455	1,562

25. Bluegrass represented that Station WVLK averages less than 10 commercial spot announcements per hour and in no event would the average exceed 12 per hour. The comparison is tabulated below:

Composite week:	*Average number of commercial spots per hour*
1963	8.9
1964	9.0
1965	8.9
1966	9.6

26. Bluegrass represented that, except for peak sales periods, the number of commercial spot announcements is limited to 14 per hour and that, during peak sales periods, the maximum is 20 commercial spot announcements per hour. The comparison is tabulated below:

	Number of commercial spots per 60-minute segment			
	1963	1964	1965	1966
14 or fewer	121 (72%)	110 (68%)	112 (69%)	104 (64%)
15-20	37 (22%)	39 (24%)	46 (28%)	43 (27%)
More than 20	10 (6%)	12 (8%)	5 (3%)	15 (9%)
Totals	168 (100%)	161 (100%)	163 (100%)	162 (100%)

27. Bluegrass defined peak sales periods as automobile traffic times in the morning and afternoon, desirable advertising days of the week (usually Thursdays and Fridays), and special advertising periods such as Christmas and during political campaigns. The time periods in which Station WVLK exceeded 20 commercial spot announcements per hour are listed below:

1963 Composite Week

Tuesday, 5–6 PM ..... (21)
Wednesday, 4–5 PM ..... (22)
Thursday, 5–6 PM ..... (25)
Friday, 7–8 AM ..... (22)
Friday, 1–2 PM ..... (21)
Friday, 2–3 PM ..... (23)
Friday, 3–4 PM ..... (21)
Friday, 4–5 PM ..... (23)
Friday, 5–6 PM ..... (22)
Saturday, 9–10 AM ..... (23)

1964 Composite Week

Monday, 7–8 AM ..... (21)
Tuesday, 5–6 PM ..... (24)
Wednesday, 5–6 PM ..... (22)
Thursday, 11–12 N ..... (21)
Thursday, 5–6 PM ..... (23)
Friday, 11–12 N ..... (21)
Friday, 3–4 PM ..... (21)
Friday, 5–6 PM ..... (21)
Friday, 11–12 M ..... (23)
Saturday, 6–7 AM ..... (21)
Saturday, 9–10 AM ..... (22)
Saturday, 11–12 N ..... (21)

1965 Composite Week

Monday, 6–7 AM ..... (21)
Monday, 7–8 AM ..... (21)
Monday, 3–4 PM ..... (21)
Thursday, 7–8 AM ..... (21)
Friday, 7–8 AM ..... (21)

1966 Composite Week

Sunday, 4–5 PM ..... (22)
Wednesday, 6–7 AM ..... (21)
Wednesday, 7–8 AM ..... (23)
Thursday, 6–7 AM ..... (23)
Thursday, 7–8 AM ..... (24)
Thursday, 8–9 AM ..... (22)
Thursday, 11–12 N ..... (21)
Thursday, 8–9 PM ..... (22)

Friday, 6–7 AM	(21)
Friday, 7–8 AM	(22)
Friday, 11–12 N	(22)
Friday, 3–4 PM	(22)
Saturday, 9–10 AM	(23)
Saturday, 10–11 AM	(22)
Saturday, 5–6 PM	(23)

28. Bluegrass proposed no substantial change in the percentage of sustaining time from that which was broadcast during the 1963 composite week. The comparison is tabulated below:

	Percentage of Sustaining Time			
	1963	1964	1965	1966
8:00 AM–6:00 PM	6.1	3.5	3.5	2.0
6:00 PM–11:00 PM	16.7	13.9	17.8	18.7
All Other Hours	13.7	13.5	14.4	14.8
Total Hours	11.2	9.2	10.4	10.1

29. A comparison similar to that done in paragraphs 23–28, *supra*, except that two-minute sponsored programs were included in the comparison was also made. While the absolute numbers relating to commercial activity, of course, increased, the relative levels for the years 1963–1966 are essentially the same as those described in paragraphs 24–28, *supra*. However, a comparison of the number of hours containing less than 15, from 15 to 20, and more than 20 commercial spot announcements (including two-minute sponsored programs) is tabulated below:

	1963	1964	1965	1966
14 or fewer	116 (69%)	109 (68%)	111 (68%)	102 (63%)
15–20	32 (19%)	28 (17%)	33 (20%)	42 (26%)
More than 20	20 (12%)	24 (15%)	19 (12%)	18 (11%)
Totals	168 (100%)	161 (100%)	163 (100%)	162 (100%)

30. In preparation for filing WVLK's 1964 renewal application, the spot announcements broadcast in 1963 were compared with prior promises by Bluegrass as follows:

"The SA count is substantially lower than that promised. However, there is heavy saturation in certain time periods due, among other things, to CBS and extensive sports network programs. As is shown on the attached chart, 64 of the 336 half-hours (20%) contained more than 9 SA's (our general policy limit). An additional 40 half-hours (12%) contained 8 or 9 SA's (our peak sales proposal). Hence, 104 half-hours (32%) were peak sales periods. Of the 64 half-hours exceeding 9 SA's, 40 had 10 SA's, 19 had 11 SA's, 4 had 12 SA's and 1 had 13 SA's."

31. In late 1966 station licensees, including Bluegrass, received the Commission's inquiry regarding commercial practices (Public Notice, FCC 66–923). In its response dated December 30, 1966, and in the 1967 renewal application, Bluegrass represented that the normal maximum

of commercial matter permitted per hour would be 24 minutes and that commercial time would not exceed 30% of total broadcast time in any given week. The 24 minutes of commercial time per hour was considered an absolute maximum by Bluegrass. However, the 1967 composite week, which includes five days preceding the filing of the renewal application, reflects the following performance with respect to these representations:

	Commercial matter by hourly segments	
	All hours	6 AM to 6 PM
24 minutes or less	141 (87%)	63 (75%)
More than 24 minutes	21 (13%)	21 (25%)
Totals	162 (100%)	84 (100%)

Percentage of commercial time per week

[Entire 1967 composite week]

	All Hours	6 AM to 6 PM
Total Broadcast Time	162:00	84:00
Time Devoted to Commercial Matter	41:40	27:39
Percentage	25.7%	32.9%

During the hours exceeding the 24-minute limit, the amount of the excess averaged one minute and eight seconds per hour.

32. Further, examination of WVLK's program logs for June and July 1967 reveals that during June more than 11% of all broadcast hours WVLK exceeded their proclaimed maximum of 24 minutes of commercial time per hour, and during July the 24-minute ceiling was exceeded almost 9% of the time.

33. At a meeting held on December 8, 1966, for the purpose of preparing their commercial policy statement for the FCC, a 24-minute maximum on commercial time per hour was adopted and there were to be no deviations. Present at this meeting were Ralph Worster, president of Bluegrass, George Webb, vice president and general manager, Paul Stakelin, program director, and Bluegrass' Washington counsel. The traffic department was required to submit weekly reports regarding the number of hours, if any, WVLK exceeded the 24-minute commercial maximum. These reports were to be submitted to Mr. Webb for forwarding to Mr. Worster and Washington counsel.

34. Reports were submitted to counsel and Mr. Worster's office by Mr. Webb for each of the weeks from December 11, 1966 through May 8, 1967. All of these reports reflected that WVLK was staying within its promised 24 minutes maximum of commercial time per hour. Because of these reports, counsel did not review any of WVLK's current logs prior to filing the 1967 renewal application. While Mr. Worster's office received copies of these reports, neither he nor Mr. Hagan recalled receiving them, nor were they aware that such reports were being forwarded to their office. It is noted that the submission of

these reports took place during the period of transition from Mr. Worster to Mr. Hagan.

35. The record shows that these reports were inaccurate. In fact, during the period in which the reports were made, WVLK exceeded its 24 minutes maximum for commercial time per hour 76 times. These reports were prepared by station personnel under the direction of Mr. Webb, and were addressed to Mr. Webb who should have known that they were inaccurate since such reports were prepared by Mrs. Golden, based upon the logs as prepared by her, without regard to any additions or changes which were thereafter made by Mr. Webb.

36. The record shows that in its reevaluation of the operation of Station WVLK following the Commission's investigation, Bluegrass adopted a revised commercial policy to limit the commercial volume to 18 minutes per hour as specified in the NAB Radio Code, which it had not adhered to before. This change became effective June 1, 1968. The new logging and billing system installed at Station WVLK contains features to keep running track, during the one week period prior to broadcast, of the volume of advertising sold in each hour, and a final tabulation of the hourly volume when the log is reproduced for broadcast. An analysis of the program logs of Station WVLK for the 1970 composite week shows that in no instance did the station exceed 18 minutes per hour and that the overall percentage of time devoted to commercial matter has been reduced substantially, from 25.7% during the 1967 composite week to 17.0%.

Issue 3—Misrepresentation or Lack of Candor

37. The misrepresentation issue relates to two distinct though interrelated matters. First is the conflict between the oral and written statements of George Webb, the general manager of WVLK and vice president and 2% stockholder of Bluegrass. The second is the responses of Bluegrass to FCC inquiries regarding the practices described in the preceding paragraphs, particularly with respect to the fraudulent billing matters. Essentially, these questions arose out of events which commenced with the Commission's field inquiry at WVLK in September 1967 and culminated in the filing of the Bluegrass petition for reconsideration on September 15, 1969.

38. Following receipt of a complaint from a former bookkeeper at WVLK, Sara Hensley, a field inquiry was conducted into that station's activities in Lexington, Kentucky, from September 21 to 29, 1967. During the course of this inquiry station records were examined and station personnel interviewed. Included in those interviewed were Rebecca Golden, the traffic girl responsible for preparing the program logs, and George Webb, the general manager. The first day the FCC investigators were at the station they briefly interviewed Mr. Webb in order to determine the forms and procedures utilized by the station in its programming and billing operations. Mr. Webb, at the time, was also advised that the reason for the investigation was a complaint that the station was billing advertisers for spots which were not broadcast. During this initial interview, Mr. Webb advised that he did not see the program logs unless there was a short list or an overload of spots—sponsors they [WVLK] couldn't get on the logs. When this happened he would move the spots around, including

those from the short list, to get them all on. During this interview, Mr. Webb also stated that only he made changes such as this.

39. During the next several days the investigators checked program logs and other station records and in the course of this preliminary review determined that several of WVLK's accounts had been overbilled. Mrs. Golden, the traffic director, was also interviewed to determine the procedures employed in preparing the program logs from orders and contracts.

40. As stated hereinbefore, Mrs. Golden advised that she prepared the program logs from start orders and contracts. She explained that when there were more commercial announcements sold than she could accommodate on the program log for that day—she was instructed to log no more than 20–22 minutes of commercial time per hour—she prepared a "short list" showing the account and number of spots which she could not place on the logs for that day. She then took the program log and short list to Mr. Webb, who personally worked with the log and short list in an attempt to place all spots sold for that day on the log. In some instances he would cross spots off the program log in order to accommodate those from the short list. However, in those instances when he crossed spots off the program logs the record shows he did not add them to the short list. He kept no record of these and relied on his memory to make them up at a later date. In fact, on rare occasions he would instruct Mrs. Golden to schedule a certain number of spots for an account as make-goods for those which he had missed. As is apparent from the number and dollar volume of spots missed in 1967, Mr. Webb's memory was inadequate for the task. As a consequence, Mrs. Golden had no way of knowing which spots Mr. Webb had crossed off the log and not rescheduled.

41. In a later interview with Mr. Webb on September 27, 1967, he confirmed to the Commission investigators that no record was maintained of the spots he crossed off the logs; that he relied entirely on his memory to reschedule the spots he deleted from the logs before the account's contract expired. The record shows that billings were made from the contracts without any reference to the program logs.

42. By letter dated March 20, 1968, the Commission sent a formal letter of inquiry to WVLK regarding, among other things, the fraudulent billing practices which the September investigation had uncovered. The licensee filed its initial response by letter dated May 31, 1968. This response did not, however, include a written statement from Mr. Webb. Following an oral request from the Commission staff, a written statement by Mr. Webb regarding this matter was submitted under cover of a letter dated June 25, 1968. In this statement, Mr. Webb, after acknowledging that he participated in "rearranging and moving spots around on the logs," went on to state:

> "As I have previously explained, the traffic girl, Mrs. Golden kept a memorandum of all commercials she needed to schedule later. I was under the impression she kept this list until she was able to do so. I thought make-goods were being run for upon very frequent examination of the logs showed she wrote in many announcements that appeared to be for this purpose. She constantly assured me she was keeping up to date."

43. Mrs. Golden acknowledged that on infrequent occasions, Mr. Webb would not be able to clear the short list and on these occasions she would reschedule the spots. She also recalled that on rare occasions Mr. Webb would tell her to run a given number of spots for an account as make-goods for spots that had been missed. These do not, however, explain the many deletions from the logs made by Mr. Webb which, according to his own prior oral statements, were never broadcast.

44. However, there may be an explanation for Mr. Webb's later attempt, in his written statement, to place all the blame on the traffic girl. By the time he made this written statement Mrs. Golden had left the station. Also, apparently by this time he had destroyed all of the short lists—the only internal station documents which would demonstrate his complete responsibility for deleting and not rescheduling spots from the logs. The Commission investigators had, however, picked up two "short lists" during the course of their investigation. While Mr. Webb apparently destroyed the originals of these after they had been returned to the station in late March 1968, copies had been made by the Commission staff and were retained in their file.

45. These two short lists were for Sunday, September 24, 1967, and Thursday, August 17, 1967. A comparison was made of the Thursday short list with the program log for that day. These confirm Mr. Webb's prior oral statements—and Mrs. Golden's testimony—in that (1) spots deleted by Mr. Webb from the log (21) were not placed on the short list; and (2) spots not on the short list were added to the log. Mr. Webb's later attempt to lay the entire blame on the traffic girl is thus false and futile.

46. The inaccuracy of Mr. Webb's written representation was also confirmed by Bluegrass. The licensee explained that the reason it did not submit an affidavit of Mr. Webb with its reply to the Commission inquiry dated May 31, 1968, was because they could not rely on, nor did they believe, what he told them. For the same reason Bluegrass made no comment whatsoever when the Webb statement was submitted by the licensee in June 1968. However, it was not until the filing of its petition for reconsideration on September 15, 1969 that Bluegrass formally advised the Commission that Webb's representations could not be relied upon even though the principals of Bluegrass should have known this to be the case by the time they received the Commission's letter of inquiry at the end of March 1968. They should have reached this conclusion on the basis of Webb's conflicting statements.

47. At WVLK during this period, it was the practice to prepare bills from the contracts and the start orders rather than the logs. The bills were also not checked against the spots actually broadcast. This was a practice which Mr. Webb apparently was aware of and approved, because in his first interview with the Commission investigators on September 25, 1967 he informed them of the practice:

"The bookkeeper does not check billings against the logs."

As a consequence, unless Mr. Webb advised the bookkeeping department of the spots he deleted from the program logs—which he

generally did not—accounts whose spots had been deleted were overbilled. However, Mr. Webb did, at times, direct the bookkeeping department, by memoranda, to check the logs for certain accounts to assure the billings were proper. To the degree that these memoranda could be correlated with the bookkeeping records, Bluegrass found that the bookkeeping department always followed Mr. Webb's instructions. Thus, the practice of billing from the contracts, coupled with Mr. Webb's not requiring billings to be checked against the program logs, and his failure to notify either traffic or bookkeeping that he had deleted spots from the logs were the reasons WVLK advertisers were being overbilled at the rate of $4,000 a month in 1967. The key to Mr. Webb's culpability was in the "short lists," since they would have revealed that he did not add the spots he had deleted from the logs to the list. Mr. Webb, however, destroyed them, but the record does not disclose the approximate date of such destruction.

48. One basic distinction must be drawn in order to avoid confusion. This relates to announcements which were scheduled on the logs, but were later preempted either by special programs or ball games running longer than scheduled. When preemptions such as this occurred, Mrs. Golden notified the bookkeeper and even provided her with the times for the make-good announcements. In fact, this was the only instance when Mrs. Golden recalled running make-goods.

49. When the members of the Commission's staff completed the field aspect of their investigation near the end of September 1967, Mr. Kincaid, the 77% stockholder, recalled being advised that they had found some instances where accounts had been overbilled. He instructed Hart Hagan, president of GMA and vice president of Bluegrass, to find out what the problem was and correct it. Mr. Hagan and Jerry Clines then went to WVLK and began talking to members of the staff to determine what they had been asked and the records taken by the FCC investigators. They also talked to Mr. Webb, the bookkeeping department and the traffic girl in order to learn about and follow the station's practices from the time a sales order was taken until the announcements were logged and later billed. Their purpose during this period was to discover the problem area and to take corrective action rather than to determine responsibility. Thus, no attempt was made to confirm the statements of station employees through station records during this period in late 1967. Mr. Hagan believed they would be confirmed later on. Also during this period, Mr. Hagan learned that a "short list" was being maintained at the station.

50. From this inquiry, Messrs. Hagan and Clines learned that the station had been preparing its bills from the start orders or contracts and immediately initiated the practice of preparing bills directly from the program logs commencing with the billings for the month of October 1967. As a result of this inquiry in late 1967, they developed a procedure for billing which permitted them to check, on a daily basis, whether all the spots for a particular account had been broadcast each day. This procedure was used from December 1967 through May 31, 1968, when WVLK went to a computerized system of logging and billing. In January 1968, Messrs. Hagan and Clines checked the logs and billings to make sure the new procedures were being followed.

51. During this period of initial inquiry in late 1967, Mr. Hagan became aware that Mr. Webb was frightened; he had also heard from members of the station's staff that Mr. Webb had expressed the opinion that he might go to jail (Mr. Hagan assumed he was joking); and by the first of April 1968 Mr. Hagan had concluded that Mr. Webb was not giving them accurate responses to their questions.

52. On March 20, 1968, William Ray, Chief of the Broadcast Bureau's Complaints and Compliance Division, directed a letter to Bluegrass regarding the matters inquired into by the Commission investigators in September 1967. This letter stated in part:

"In connection with the Commission's inquiry into the billing practices of Station WVLK, Lexington, Kentucky, it is requested that you submit a detailed statement, in affidavit form, as to each of the following matters:

"(a) An analysis of the program logs of WVLK for the period January 1, 1967 through August 31, 1967, shows that on numerous dates the names of advertisers appearing on the station's program logs have been crossed out and other advertisers' names written in without in many instances rescheduling the announcements crossed out."

After asking other questions in subparagraphs (b)–(d) relating to billing practices which charged accounts for spots not broadcast, or not broadcast in the times contracted for, and performance affidavits which did not reflect the times spots were actually broadcast, if at all, the letter concluded:

"With respect to all of the foregoing matters, explain why your billings and affidavits were not adjusted to conform with the broadcast of commercial matters shown on your logs. Also, please state on whose orders or under whose authority the billings and affidavits referred to above were issued. Was any officer or director of the licensee aware that such billings and affidavits were being issued? . . . Who authorized the deletions and substitutions in the logs referred to in (a) above?

"Any additional information or material that you feel may help clarify the billing practices at WVLK should be submitted with your response."

53. On May 31, 1968 Bluegrass filed its response to the Commission's letter of inquiry. Bluegrass represented that it had conducted a thorough investigation. More particularly it represented that the investigation included a review of the "station's records relating to the sale, scheduling, broadcast and billing of advertising time," and discussions regarding "the station's billing practices and procedures" with Mr. Webb, the general manager, and Rebecca Golden, the traffic director. This response, when read as a whole, represented that the station had procedures in effect which, if the employees had followed, would have prevented the overbilling from occurring. As the findings in the following paragraphs illustrate, no thorough investigation was conducted; interviews, particularly with Mrs. Golden, were not conducted as claimed; all records were not examined as alleged; and key factual representations in that response were based on the unverified representations of Mr. Webb. As a consequence, the response of Bluegrass on May 31, 1968 was factually inaccurate.

54. The first major inaccuracy occurred when Bluegrass advised the Commission of the procedure at WVLK for scheduling announcements. Thus, the licensee stated:

"During the period in question [January 1, 1967 through August 31, 1967], the procedure with respect to scheduling was as follows: . . .; on days when she [the traffic girl] could not accommodate all of the advertising, she referred

the unscheduled items to Mr. Webb; Mr. Webb reviewed the log as prepared by the traffic girl along with the list of unscheduled items; he often rescheduled various spots, either personally or by giving instructions to the traffic girl; any advertising which could not be accommodated (whether initially scheduled by the traffic girl and deleted in the rescheduling by Mr. Webb or advertising that was not scheduled in the first instance) was placed on the 'short list' * for scheduling at a subsequent date.

However, after giving the above explanation of the procedure followed, Bluegrass, in its response, stated: "our study indicates that during the period in question practices varied substantially from the foregoing procedures."

55. As discussed in preceding paragraphs, the contents of the "short list" represented the key to pinpointing responsibility for the overbilling. Further, contrary to the above representation, it appears that Mr. Webb, in fact, did not add the spots he deleted from the logs to the "short list." The foregoing representation by Bluegrass as to scheduling procedures came entirely from George Webb, who the licensee should have known at that time was untruthful. Records, including the "short lists," were not checked, if they were available, to confirm the accuracy of these statements. Nor was Mrs. Golden questioned by Messrs. Hagan and Clines regarding this matter or what she had told the FCC investigators.

56. This misrepresentation was repeated when on May 31, 1968 Bluegrass responded directly to subparagraph (a) of the Commission's letter of inquiry (paragraph 52, *supra*). There Bluegrass stated with respect to the scheduling of advertising:

"This procedure has been explained above. The rescheduling of spots on the logs as prepared by the traffic girl was done on the day before broadcast by Mr. Webb or by the traffic girl on his instructions. The procedure was to add the deleted spots to the 'short list' for scheduling at a later date. However, it appears that, in practice, in many instances, such spots were not subsequently scheduled or broadcast."

The implication of this statement being, if the traffic girl had only done what she was supposed to do—i.e., reschedule the spots Mr. Webb added to the short list—this could not have occurred. Of course, Mr. Webb never did add the spots he deleted from the log to the "short list," as detailed hereinbefore. Again, Bluegrass stated in said response, "it appears that, in practice, in many instances, such spots were not subsequently scheduled or broadcast."

57. As described in paragraph 47, *supra*, the actual practice or procedure was for the bookkeeper to only check the bills with the traffic girl on Mr. Webb's specific instructions and this was a practice or procedure of which Mr. Webb was aware and condoned. Further, when Bluegrass checked the Webb memoranda to the bookkeeper, after the hearing had commenced, they found no instance where Mr. Webb's instructions had been disregarded.

58. Examination of the billing records would have revealed "make-goods" and credits where spots had been missed if Bluegrass had done more than a superficial examination and comparison of the logs and

*"The 'short list' was a continuing record of advertising that had been sold, but not yet carried. As has been indicated, on heavy commercial days advertising which could not be accommodated was added to the 'short list.' On lighter commercial days, time availabilities on the log were filled with advertising from the 'short list.' "

billing records. They would have discovered—as the FCC investigators had previously in only a few days study—that the overbillings were the result of deletions from the program logs.

59. There are indications that Bluegrass' "thorough" investigation into the responsibility for the overbillings left a great deal to be desired. For example, the FCC investigators believed they could tell the difference between spots crossed off the logs (deleted) and those missed because a ball game ran over, for example, because the logs would indicate the length of the programs. As discussed in paragraphs 47 and 48, *supra*, the distinction in the station practices or procedures between spots deleted from and added to the log by Mr. Webb and those missed because of program preemptions was elemental in determining fault for the overbilling. Yet, both Messrs. Hagan and Clines, who conducted the investigation, claimed not to know there was a difference at the time of hearing. However, to learn this, they did not have to study the logs and compare the bills, all they had to do was ask Rebecca Golden, but they did not.

60. One final misleading statement by Bluegrass in its response to the Commission's letter of inquiry should be considered. Under the heading "other matters," it is stated:

> ". . . Mr. Webb recalls discussing with the traffic girl and with the bookkeeper on numerous occasions the need to reschedule spots placed on the 'short list' and the need to revise bills and affidavits whenever advertising was not run as specified in the sales contracts or orders. Mrs. Rebecca Golden recalls receiving such instructions from Mr. Webb and she recalls instances when she furnished corrected times of commercials from the logs to Mrs. Hensley."

The response continued:

> "The unavailability of Mrs. Hensley makes it difficult to piece together the day-to-day detailed conversations and practices of the key staff personnel regarding the matter during the period in question. It is also difficult to ascertain the extent to which the fault lies with Mr. Webb, Mrs. Hensley and/or Mrs. Golden, or the extent to which these practices were the product of carelessness or were intentional. However, it is clear that a serious practice was permitted to occur in a phase of the operation of the station for which the licensee has looked to Mr. Webb as the responsible official."

When Mr. Hagan was first questioned about this representation, he testified that Mr. Clines had talked to Mrs. Golden and he provided him with this information. However, from his conversations with Mr. Clines, Mr. Hagan did not understand that Mrs. Golden had admitted receiving instructions from Mr. Webb regarding the rescheduling of spots Mr. Webb had deleted from the logs. Furthermore, Mr. Clines did not recall either discussing with or being advised by Mrs. Golden that she either provided Mrs. Hensley with corrected times or that she received instructions from Mr. Webb regarding the rescheduling of spots which Webb had deleted from the logs. Later, Mr. Hagan testified that the basis for this representation was a written statement obtained from Mrs. Golden by Mr. Webb in October 1967 and brought to his attention a month to six weeks later.

61. The statement Mr. Hagan claims to have relied on makes no reference whatsoever to receiving instructions from Mr. Webb regarding the revision of bills. It does indicate that she provided the bookkeeper with corrected times for preemptions only, and only describes receiving instructions from Mr. Webb in those instances where he

could not get onto the logs the spots Mrs. Golden had placed on the short list. No reference is made with respect to spots which Mr. Webb had deleted from the logs. Bluegrass never questioned Mrs. Golden about this statement. If they had, they would have learned that the answers, though true, were too general upon which to base the above representation.

62. Moreover, Bluegrass, even after designation for hearing, did not reveal to the Commission the fact that Mr. Webb was the person it principally relied on in preparing its response to the Commission's letter of inquiry. Thus, on August 23, 1968, the Bureau served on Bluegrass its "Bill of Particulars." At page 2 it was stated:

> ". . . The statement of the licensee to the effect that the deleted spots were added to the 'short list' is in direct conflict with information supplied to the Commission during the field inquiry. . . .
>
> "4. Licensee stated, with respect to billing, that the bookkeeper prepared bills based upon the sales contracts or orders, and if advertising was not carried in accordance therewith, the traffic girl and the bookkeeper were to check the logs and revise the bills and affidavits of performance accordingly. However, licensee did not explain how, even if its alleged procedures were followed, the traffic girl and bookkeeper would know which logs to check and for which accounts, since they made up the affidavits from the contracts instead of the logs and had no way of knowing which spots Webb had later stricken from the logs."

At that time, Bluegrass was put on notice that the accuracy of the representations it had made in response to the Commission's letter of inquiry were being questioned.

63. Also, by December 1968, counsel for Bluegrass had a copy of the statement Mrs. Golden had given to the Commission investigators and, thus, had to be aware that, according to her, Mr. Webb did not add spots he had deleted from the program logs to the short list. Bluegrass' awareness as to the extent of Mr. Webb's culpability by December 1968 is confirmed by its own statement that by that time Bluegrass had concluded that Mr. Webb was the central figure. Yet, Bluegrass in its petition for reconsideration of the designation order in September 1969 did not advise the Commission fully and completely as to Mr. Webb's role in the preparation of its response to the Commission's letter of inquiry. Rather, Bluegrass only advised the Commission that the reason it did not include an affidavit of Mr. Webb with its response was because he couldn't be relied upon to tell the truth and for the same reason Bluegrass did not comment on Mr. Webb's statement when it was subsequently submitted. While it was acknowledged that the representation that Mr. Webb or Mrs. Golden advised the bookkeeping department when spots were not carried was made by Mr. Webb, they never advised that it had not been verified. Regarding the statement that spots deleted from the logs by Webb were added to the short list, Bluegrass advised that it was unsure whether this was an assumption or that it came from Mr. Webb. However, at the hearing—after the petition for reconsideration had been denied—Mr. Hagan admitted that this statement came from Mr. Webb.

64. The explanation offered by Bluegrass in the record to explain why Messrs. Hagan and Clines relied upon the information furnished them by station personnel for the description of the former procedures at the station is as follows:

a. During the period from September 1967 (when the Commission's investigators left the station) until about the first of April 1968 (when Mr. Ray's letter was received), the essential station records, consisting of the program logs for the preceding twelve-month period and relating invoices, were in Washington, D.C. under study by Mr. Ray's office;

b. During this period while the station records were not available for checking, Messrs. Hagan and Clines concentrated on the installation and operation of a new logging and billing system. The new system was installed in October 1967 immediately following the Commission's field investigation and thereafter Messrs. Hagan and Clines personally supervised the billing operation at the end of each month. Further, at some point in time following the Commission's field investigation in September 1967, the short lists were removed from the station's files and destroyed by Mr. Webb. Messrs. Hagan and Clines did not actually see any of the short lists, except copies of two short lists that were taken by the Commission's investigators in September 1967. Mrs. Golden testified that the last time she saw the short lists was at the time of the field investigation in September 1967;

c. Upon receipt of Mr. Ray's letter and upon the return of the program logs and invoices (approximately the first of April 1968), Messrs. Hagan and Clines undertook a study of these documents, correlating the logs to the invoices for all accounts on the station over an eight-month period, ascertained that the proper logging and billing procedures had not been followed and prepared a report on the resulting overbilling of advertisers. This was a crash project and, in fact, was not completed until after the licensee's response to Mr. Ray's letter was filed on May 31, 1968 (a final report was submitted on June 12, 1968);

d. Mr. Hagan testified that since the former logging and billing procedures had been replaced by a new system, and since the fact that the former procedures had broken down in practice was acknowledged in the response to Mr. Ray's letter, he did not undertake further investigation with respect to the description of the former procedures that had been provided by Mr. Webb and other station personnel.

Issue 4—Falsification of Program Logs

65. On July 24, 1967, the WVLK renewal was granted and on August 14, 1967, the Commission rescinded said renewal. At the time of the rescission Washington counsel for Bluegrass called Mr. Webb, explained that the problem was the amount of commercial time proposed by the station and advised him to continue to adhere to the 24-minute maximum. Mr. Webb, however, took matters into his own hands and ordered that 40-second rather than 60-second spots would be sold to local accounts. He simultaneously ordered the traffic girl, Mrs. Golden, to change the logs to reflect 40-second rather than 60-second spots for all local accounts even though there had been no changes in either continuity or contracts. As a result of these instructions by Mr. Webb, the program logs were falsified as follows:

Date:	*Number of false entries*
August 17, 1967	188
August 19, 1967	125
August 20, 1967	146
August 21, 1967	128
August 22, 1967	106
August 23, 1967	143

66. The program director, William Stakelin, after several arguments with Mr. Webb during this period, prevailed and Mrs. Golden was instructed to continue to log local announcements as 60 seconds until new sales orders were received which specified a shorter length. The statement of Mrs. Golden in the matter corroborates that of Mr. Stakelin.

Issue 5—Logging Practices

67. The Bill of Particulars refers to program logs for June 12–18, 1967 and July 10–16, 1967 and specifies the following failures:

(a) to show the length of commercial messages,
(b) to identify announcements as commercial,
(c) to give names of public service organizations on whose behalf public service announcements were made,
(d) to log station identification announcements, and
(e) to initial log corrections.

68. With respect to paragraph 67(a) above, the program logs show that (a) during the period June 12–18, 1967 there were 200 entries (10 typewritten and 190 handwritten) for commercial messages for which the length of the message either was not given or was illegible; and (b) during the period July 10–16, 1967 there were 59 entries (5 typewritten and 54 handwritten) for commercial messages for which the length of the message either was not given or was illegible. During the June 12–18, 1967 period 7 entries were illegible. During the July 10–16, 1967 period 4 entries were illegible. For the remaining commercial entries referred to above, the length of the message was omitted.

69. With respect to paragraph 67(b) above, the program logs show that (a) during the period June 12–18, 1967 there were 206 entries for commercial messages (5 typewritten and 201 handwritten; 198 in red ink and 8 in black ink) which did not have an identifying symbol of "CC" for commercial continuity or "CA" for commercial announcement as provided for in the program log form; and (b) during the period July 10–16, 1967, there were 93 entries for commercial messages (1 typewritten and 92 handwritten; 85 in red ink and 8 in black ink) which did not have such an identifying symbol. The record shows that the practice of the station was to show commercial matters in red ink and other matters in black ink, both with respect to typed information and handwritten information on the program logs.

70. With respect to paragraph 67(c) above, the program logs show that (a) during the period June 12–18, 1967 there were 29 entries of public service announcements for which it might be said that the name or the organization was not clearly set forth, said entries being as follows:

"Safe Driving"	(7)
"Save the Children"	(5)
"Cancer"	(3)
"Savings Bonds"	(8)
"Nat'l Safety"	(2)
"Fair Labor Standards"	(1)
"Safety"	(1)
"Freedom's Roll Call"	(1)
"T.B."	(1)

and (b) during the period July 10–16, 1967 there were 32 such entries as follows:

"Save the Children"	(5)
"Safe Driving"	(5)
"Nat'l Wildlife"	(5)
"Nat'l Safety"	(7)
"Savings Bonds"	(6)
"Fair Labor Standards"	(1)
"T.B."	(2)
"Voter Registration"	(1)

71. With respect to paragraph 67(d) above, the program logs show that (a) during the period June 12–18, 1967 there were 23 instances of failure to log any station identification announcement and 30 instances of an entry showing that such an announcement was broadcast outside the time limits specified in the Commission's Rules; and (b) during the period July 10–16, 1967 there were 28 instances of failure to log any such announcement and 7 instances of entries showing that such announcements were broadcast outside the Commission's time limits.

72. With respect to paragraph 67(e) above, the program logs show that (a) during the period June 12–18, 1967 there were 312 handwritten entries involving an alteration of the typed information on the log (230 were initialled and 82 were not) and there were 298 handwritten entries involving an addition to, but not an alteration of, the typed information on the log (1 was initialled and 297 were not); and (b) during the period July 10–16, 1967 there were 252 handwritten entries involving an alteration of the typed information on the log (196 were initialled and 56 were not) and there were 198 handwritten entries involving an addition to, but not an alteration of, the typed information on the log (1 was initialled and 197 were not).

Issue 6—Public Service Announcements (PSAs)

73. In preparing the WVLK 1964 renewal application, an analysis of the 1963 composite week revealed that less than half of the 250 PSAs promised in the previous renewal application had actually been broadcast. Whereupon, on March 19, 1964, counsel suggested that WVLK set up the following minimum PSA schedule:

8:00 AM–6:00 PM—70 per week (average of 1 per hour)
6:00 PM–11:00 PM—70 per week (average of 2 per hour)
All Other Hours—110 per week (average of just over 3 per hour)

74. Bluegrass advised counsel on April 16, 1964 that they were putting the above suggestion into effect immediately, even though they felt that PSAs broadcast between midnight and 6:00 AM would have little effect. The degree that Bluegrass followed the advice of counsel is reflected in the following tabulation of PSAs during the composite weeks 1963–1966:

	Number of PSAs			
	1963	1964	1965	1966
8:00 AM–6:00 PM	70	53	57	50
6:00 PM–11:00 PM	26	13	15	27
All Other Hours	17	50	122	114
Totals	113	116	194	191

	Breakdown of PSAs during "all other hours"			
	1963	1964	1965	1966
11:00 PM–6:00 AM	4	34	99	99
6:00 AM–8:00 AM	13	16	23	15
Totals	17	50	122	114

In its 1964 renewal application, Bluegrass proposed no substantial change in the number of PSAs broadcast during the 1963 composite week, i.e., 113.

75. In the 1967 renewal application, Bluegrass proposed no substantial change in PSA policy from that reflected by an analysis of the 1966 composite week. A comparison of the 1966 and 1967 composite weeks reflects the following:

	Number of PSAs	
	1966	1967
8:00 AM–6:00 PM	50	18
6:00 PM–11:00 PM	27	15
All Other Hours	114	64
Totals	191	97

	Breakdown of PSAs During "All Other Hours"	
	1966	1967
11:00 PM–6:00 AM	99	63
6:00 AM–8:00 AM	15	1
Totals	114	64

Further, analysis of the WVLK program logs for the month of June 1967 reflects the following:

	Number of PSAs Broadcast
6:00 AM to 6:00 PM	4
6:00 PM to 12:00 M	40
12:00 M to 6:00 AM	219
Total PSAs	263

Bluegrass contends that the count of PSAs does not reflect the following daily program services providing publicity for local organizations and activities: (a) deployment of the mobile van from early morning until late at night cutting into regular programming throughout the day, among other things, to publicize and cover community activities from remote location; (b) interviews and conversation regarding community organizations and activities as a major element of the top rated Arty Kay program; (c) similar interviews on the Man-on-the-Street program; and (d) a calendar of social events.

76. While prior to the 1967 composite week there was generally an increase in the number of PSAs broadcast, the following tabulation by percentage of distribution of PSAs during the broadcast day reflects a somewhat different picture:

	1963*	1964	1965	1966*	1967
8:00 AM to 6:00 PM	62%	46%	29%	26%	19%
6:00 PM to 11:00 PM	23%	11%	9%	14%	15%
All Other Hours	15%	43%	62%	60%	66%

*No change proposed for next renewal period.

No attempt was made to check current program logs prior to filing the 1967 renewal application on April 28, 1967 because, according to counsel for Bluegrass, there did not appear to be any major change in the operation of the station after the dates of the composite week, and, in the absence of some indication thereof, it had not been his custom to check such current logs.

Issue on Programming

77. This issue requires a determination of whether the programming of Station WVLK has been meritorious, particularly with regard to public service programs. During the course of the hearing, Bluegrass submitted a great deal of evidence, including many witnesses from the community active in civic, business, educational and political affairs with respect to its programming performance. The several aspects of this programming will be discussed below.

78. *News.* Since 1957 WVLK has had a full-time news director and a mobile news studio. By 1966 there was a news staff of four serviced by two mobile units and four wire services. At the time of the hearing, the news department had five full-time and one part-time employees and utilized two wire services, race and sports wires having been discontinued. Local news is gathered and edited eighteen hours a day, seven days a week. There is at least one local newscast every hour. During the peak early morning period, from 6:00 AM to 9:00 AM, local news runs from ten to fifteen minutes per hour. During the peak early evening period, from 6:00 PM to 7:00 PM, the station has presented an hour long segment of news and other "talk" programming, also, at 10:15 PM, a fifteen-minute news roundup. Station WVLK also presents network news programs each

hour from 8:00 AM to 9:00 PM, except when some time segment is preempted, i.e., by a ball game or other event.

79. The mobile unit is principally a tool of the news department. However, it serves a variety of other functions. Thus, not only are local newscasts regularly originated from it, but, in addition, when not on a specific assignment it roams the streets of Lexington from 7:00 AM to midnight, Monday through Saturday, and from noon to 11:00 PM on Sundays, monitoring the police radio and searching for news. Further, it is utilized to cover the arrivals in Lexington of visiting dignitaries such as Governors, Senators, Congressmen, etc. It is also utilized to broadcast scores and "wrap-ups" of local sporting events where live coverage has not been provided, as well as a public relations device when it appears at local benefits, charity drives and other civic projects. Many witnesses from the Lexington area testified on behalf of WVLK regarding the value of the WVLK news department and the mobile studio in particular. These included Adolph Rupp, University of Kentucky basketball coach, Theodore Sanford, State High School Athletic Commissioner, Logan Gray, Airport Manager, Benjamin Cowgill, builder, John A. Wallace, Negro masonry contractor, and others.

80. As part of its local news coverage, WVLK cooperates with the local coroner in handling news regarding violent deaths, and is in daily contact with local police and fire departments, area hospitals, civic leaders and officials of both the local and federal courts. WVLK also regularly covers such meetings as the Lexington Board of City Commissioners, Lexington Board of Education, Fayette County Board of Education, Fayette County Fiscal Court, City-County Planning Commission, Human Rights Commission, University of Kentucky Board of Trustees and its Executive Committee and the University of Kentucky Quarterback Club. Depending on the importance of the meeting, a newsman either takes notes for a later story or the meeting is recorded for broadcast at a later time.

81. During local elections, the station attempts to provide full coverage of both primary and general elections, including live coverage of any forums or debates in which all candidates participate, and projections of the election results through analysis of early returns from selected "profile precincts." National elections are covered through the services of the CBS Network and U.P.I. wire.

82. WVLK has broadcast news analysis and commentary type programs from CBS. Among these were: Alexander Kendrick Reporting, Lowell Thomas, Prospective U.N., Reasoner Report, Walter Cronkite Reporting, Washington Week, White House Correspondent, World News Roundup and World This Week. According to the 1966 composite week, all of these programs except Prospective U.N., White House Correspondent and World This Week were being broadcast.

83. *Sports.* For approximately twenty years Station WVLK served as the anchor station for play-by-play coverage of football and basketball games of the University of Kentucky. The UK football game programming, with pre-game and post-game shows, totals nearly five hours, and a second college football game is also presented on Saturdays via the Pick-of-Dixie network. The UK basketball game pro-

gramming includes play-by-by coverage of freshmen games and totals approximately four and one half hours, usually starting at 5:30 PM.

84. For approximately twenty years Station WVLK has originated play-by-play coverage of high school football and basketball games. The football games are broadcast on Friday evenings and the basketball games are broadcast two evenings a week, plus tournaments. Station WVLK also originates coverage of basketball games of area colleges and universities in addition to the University of Kentucky, and in all it broadcasts over 100 basketball games in a season.

85. Station WVLK originates coverage of the feature race of the day during the spring and fall meets at the local thoroughbred track (Keeneland) and has, on a year around basis, broadcast a horse racing news program six evenings a week. The station presents sports news throughout the day. For approximately fifteen years, Station WVLK carried the baseball games of the Cincinnati Reds and, upon conclusion of the baseball season, the football games of the Cleveland Browns, but discontinued all professional sports, except horse racing, about 1966.

86. In addition to sports programming involving the schools, Station WVLK broadcasts school closing and other emergency announcements for many school districts in Central Kentucky, school menus, news coverage of school board meetings, publicity for PTA's and other school organizations, taped choral presentations by groups from elementary schools, high schools and colleges during the Christmas season, and a variety of special programs throughout the year.

87. *Farm.* Station WVLK broadcasts a daily fifteen-minute farm program produced by the faculty and staff of the University of Kentucky. During the tobacco market season, Station WVLK broadcasts live coverage of the opening sale, daily tobacco market programs featuring a local warehouse official and coverage of the meetings of the Lexington Tobacco Board of Trade. Station WVLK covers the thoroughbred sales at Keeneland, the "standardbred" sales at Tattersall's Area and presents special farm programs from time to time.

88. *Other program services.* Other local program services originated by Station WVLK include Social Scope, a daily program regarding social events in the community; Magazine Report, a daily program regarding interesting articles in current magazine issues; Stork News, a daily program of hospital news; Pet Patrol, a daily feature to find lost pets; and Job Opportunities, a daily program produced in cooperation with the local employment office. Recorded discussion program series include Georgetown University Forum, a panel discussion produced in Washington, D.C., 30 minutes weekly, and Earl Nightingale, a daily commentary series.

89. *Publicity for Community Affairs.* WVLK has made its staff available to civic organizations to assist in the preparation of PSAs and members of its staff have given talks and lectures to civic and government groups regarding techniques and procedures for the dissemination of public information. The station has also taken an active part in promoting such charitable functions as the Bluegrass Fair, a fund raising project of the local Lions Club for its Eye Care Program and, in conjunction with the Lexington Recreation Department, a weekly record hop for teen-agers.

90. Two vehicles for publicizing community affairs in Lexington during 1966 were the fifteen-minute "Man-on-the-Street Show," conducted daily by Ted Grizzard, and up to forty minutes of the Arty Kaye Show in the mornings. Both of these programs were conducted by long time personalities at the station. Many witnesses from the Lexington area testified on behalf of WVLK with regard to the effectiveness of these two shows in promoting and calling attention to matters of concern or need in the service area. However, Mr. Grizzard has, since 1966, retired and the "Man-on-the-Street Program" is no longer carried.

91. Eighteen community leaders testified at the hearing on behalf of Bluegrass in support of the public service programming of Station WVLK, and an additional eight persons had been listed as witnesses to testify similarly but were not called to the stand when a stipulation was entered that their testimony would be in the same manner and vein as the testimony of the eighteen who had testified.

92. The record also contains the sworn written statements of approximately one hundred ninety community leaders and members of the public attesting to the public service programming of the station. These statements cite a wide variety of program services and community organizations for which program services have been rendered, and eighty-one of such statements were given by persons whose businesses had received refunds for overbilling by WVLK. On the other hand, no public witness appeared to testify adversely as to the public service programming record of Station WVLK, or to testify adversely regarding Bluegrass and its principals in any way.

93. With respect to the consistency of the program service of WVLK, Bluegrass points to the renewal applications that have been filed by the station over the years. In the 1961 renewal application, Bluegrass represented that 35.2 percent of program time would be devoted to various categories of programming other than entertainment, including 16.2 percent news and 1.1 percent discussion, and that 14.7 percent of the programming would be locally produced. The 1964 renewal application represented that 33 percent of program time would be devoted to non-entertainment categories, including 15.8 percent news and 1.3 percent discussion, and that 13.7 percent would be locally produced. The 1964 renewal representation was taken from, and was the same as, the performance of Station WVLK during the 1963 composite week. These percentages were carried forward as representations for the next license term. The 1967 renewal application, which was taken from the 1966 program performance of the station, showed that 39 percent of program time would be devoted to non-entertainment categories of programming, including 17.5 percent news and 0.8 percent discussion, and that 15 percent of the programming would be locally produced.

94. The record shows that except for a maintenance period, WVLK broadcasts twenty-four hours a day, seven days a week, and is the only station in the Central Kentucky area that provides an all-night radio service.

ULTIMATE FINDINGS AND CONCLUSIONS

1. The license renewal application of Bluegrass Broadcasting Co., Inc. for renewal of license of Station WVLK, Lexington, Kentucky, was designated for hearing on issues relating to: fraudulent billing; falsification of program logs; misrepresentations regarding commercial standards; failure to conform to its proposals regarding public service announcements; violations of the Commission's logging rules; misrepresentations by the licensee and/or its employees; failure to properly supervise station operations; and meritorious programming with regard to public service programs.

Issue 1—Fraudulent Billing

2. The findings show that Bluegrass ran computerized studies of its billings for the years 1965, 1966 and January to September 1967. Because of the complexity of the undertaking, computer personnel indicated that a margin of error of 1% to 2% should be allowed. These correlation studies revealed that in both 1965 and 1966 WVLK broadcast more spots than it billed its advertisers for, but that in both years the margin of error was within the 1% to 2% range noted above. The computerized study for 1967 showed that beginning in March and continuing through September, Bluegrass overbilled its advertisers in the amount of $36,122.26, of which sum $2,100 represented advertising that was broadcast outside the time limits specified in the advertising contracts, and the balance represented advertising that was never broadcast.

3. The findings further show that this overbilling resulted from the procedure of billing advertisers from the sales contract or order rather than from the program logs. This procedure was in effect when the present ownership of WVLK took the station over and had been continued. In the early 1960's WVLK began experiencing a sold-out condition in certain time limits, particularly on Thursdays and Fridays, and a "short list" came into use. This "short list" consisted of items that could not be accommodated on a particular day, but which were supposed to be broadcast the following day or at the latest by the weekend.

4. The traffic girl prepared the logs and scheduled advertising thereon up to a specified limit per hour. Any excess was placed on the "short list," and the log and the "short list" were given to Mr. Webb, general manager of Bluegrass since 1966 and sales manager prior thereto, who worked with the log and the list in an effort to accommodate the unscheduled advertising. Mr. Webb, who was also an officer and a 2% stockholder of Bluegrass, stated that he was the only one who worked with the logs and the "short list," and that only he made changes thereon. In his attempt to place all spots sold for that day on the log, he would move the spots already on the log around, and in some instances would cross spots off the log in order to accommodate those from the "short list." The procedure with respect to spots crossed off the log by Mr. Webb was that they were supposed to be added to the "short list." However, the record shows that Mr. Webb kept no record of such spots crossed off, that he did not add them to the "short list," and that he relied on his memory to make them up at a later date. That

his memory was inadequate for the task is apparent from the fact that the advertisers were overbilled in the amount of over $36,000 as a result of his actions.

5. The findings further show that Bluegrass instituted corrective action in October 1967 to correct the fraudulent billing that had taken place during the early part of that year. First, it instituted the practice of billing advertisers directly from the station logs rather than from the sales contract. Second, it has now installed a computerized logging and billing system with various features and internal checks designed to insure the accuracy of the billings. Third, it has relieved Mr. Webb and Mr. Grizzard of all managerial responsibilities and installed new management at the station. Fourth, a representative of the ownership group periodically conducts a spot check of the accuracy of the billing process at unannounced intervals. The findings also reflect that the applicant has made complete restitution to the advertisers who were overbilled in 1967 as disclosed by the correlation studies hereinbefore mentioned.

6. It further appears that with the exception of Mr. Webb, a 2% stockholder in Bluegrass, no member of the ownership group of the applicant knew or suspected that the aforesaid overbillings were occurring. All this, in spite of having received various communications from their Washington communications counsel with respect to billing practices of station licensees, and calling attention, among other things, to the very situation that existed at WVLK with respect to the billing process.

7. With respect to this issue it is concluded that the licensee overbilled advertisers; that such overbillings were the result of the action of Mr. Webb; and that Mr. Webb was the general manager, an officer and a 2% stockholder of the licensee.

Issue 2—Commercial Practices

8. The record contains an analysis of the program logs of WVLK for five different annual composite weeks. While an overall comparison of such composite weeks leads to a conclusion that there has been substantial compliance with the various commercial representations contained in its renewal application, there have been quite a few instances of deviations from such representations. Bluegrass did not subscribe to the NAB code with respect to commercial limitations, but it advised the Commission in its 1964 renewal application that it would not exceed 20 commercial spots an hour. However, the record shows that both during the 1963 and 1964 composite week analysis, such limit was exceeded. Such excess occurred during 10 hours of the 1963 composite week and involved from 21 to 25 commercial spot announcements per hour, while in the 1964 composite week, during 12 hours said maximum was exceeded by from 21 to 24 spots. Similar figures for 1965 and 1966 are 5 hours and 15 hours, respectively. The representation of Bluegrass that its station would average less than 10 commercial spots per hour during all hours of operation, and in no event would the average exceed 12 spots per hour, is compared favorably with the average number of spots per hour during the composite weeks for 1963 through 1966, and ranges from 8.9 commercial spots per hour to 9.6 such spots per hour. The station also represented that, except for peak sales periods, the

number of commercial spot announcements would be limited to 14 per hour, and that during peak sales periods that limit would be 20 commercial spots per hour. However, the findings show that during the composite weeks hereinbefore analyzed WVLK exceeded its 20 spots per hour maximum by from 3% to 9%.

9. The findings further reveal that after receipt of the Commission's inquiry addressed to all licensees regarding commercial practices in late 1966, Bluegrass, in its response, represented that the normal maximum of commercial matter permitted per hour would be 24 minutes, and that commercial time would not exceed 30% of total broadcast time in any given week. However, the 1967 composite week reflects that the 24-minute maximum was exceeded 13% of the time on the overall broadcast day, and by 25% during the hours from 6:00 AM to 6:00 PM. During the hours exceeding said 24-minute limit, the amount of the excess averaged one minute and eight seconds per hour. Similarly, while the percentage of commercial time per week during all hours of operation in the 1967 composite week was only 25.7%, the analysis shows that during the period from 6:00 AM to 6:00 PM the percentage averaged 32.9%.

10. During a meeting held on December 8, 1966 for the purpose of preparing WVLK's policy statement with respect to commercial practices for the FCC, the 24-minute maximum on commercial time per hour noted hereinbefore was adopted, and there were to be no deviations. It was agreed that the programming department would submit weekly reports regarding the number of hours, if any, WVLK exceeded the 24-minute commercial maximum. These reports were to be submitted to Mr. Webb for forwarding to Mr. Worster and to Washington counsel. The record shows that such reports were submitted by Mr. Webb to the aforesaid persons for each of the weeks from December 11, 1966 through May 8, 1967, and that all of these reports reflected that WVLK was staying within its promised 24-minute maximum of commercial time per hour. However, the record shows these reports were inaccurate, and that, during the period in which these reports were made, WVLK exceeded its 24-minute maximum for commercial time per hour a total of 76 times. The findings further show that these reports were prepared by station personnel under the direction of Mr. Webb, and were addressed to Mr. Webb who should have known that they were inaccurate since they were prepared on the basis of the logs as prepared by the traffic girl without regard to any additions or changes to said logs that had been thereafter made by Mr. Webb.

11. Effective June 1, 1968, the findings show that in its reevaluation of the operation of Station WVLK after the Commission's investigation, Bluegrass adopted a revised commercial policy of limiting the commercial volume to 18 minutes per hour in accordance with the NAB radio code. An analysis of the program logs for the station during the 1970 composite week shows that in no instance did the station exceed 18 minutes per hour, and that the overall percentage of time devoted to commercial matter had been reduced from 25.7% during the 1967 composite week to 17% during the 1970 composite week.

12. With respect to Issue 2 it is concluded that, on an overall basis, the performance of the licensee has been in substantial compliance with the commercial representations set forth in its renewal applications, but

that there have been deviations, in some instances substantial deviations, from such representations.

Issue 3—Misrepresentation or Lack of Candor

13. This issue concerns two interrelated matters. First is the conflict between the oral and written statements of George Webb who was general manager of WVLK, and vice president and 2% stockholder of Bluegrass. The second relates to the responses of Bluegrass to Commission inquiries regarding practices at the station with particular reference to the fraudulent billing matters. According to the findings, the Commission's investigators were given the utmost cooperation when they investigated the station in September 1967, and station records and station personnel were made available to them without any hesitation. The record further shows that the licensee continued to be cooperative with the Commission's staff throughout its investigation of the matter which continued for a period of nearly a year.

14. The findings show that when the Commission's investigators arrived at the station they briefly interviewed Mr. Webb in order to determine the procedures that were utilized by the station in its programming and billing operations. During this initial interview, Mr. Webb advised the investigators that he did not see the program logs unless there was a short list or an overload of spots that they could not place on the logs. He stated that when this happened, he would move the spots around, including those from the "short list," to get them all on, and further stated during this initial interview that he was the only one that made such changes. In a later interview with the investigators, Mr. Webb confirmed that no record was maintained of the spots he crossed off the logs in order to accommodate other spots, and that he relied entirely on his memory to reschedule the spots he deleted from the logs before the account's contract expired. He did not add such deleted spots to the "short list."

15. When the licensee filed its initial response on May 31, 1968 to the Commission's letter of March 20, 1968, it did not include a written statement from Mr. Webb. After an oral request from the Commission's staff, a written statement was secured from Mr. Webb regarding the billing practices, and was submitted, without comment by the licensee, under letter of June 25, 1968. Said written statement from Mr. Webb apparently attempted to place the blame for the spots that were deleted, and as a result thereof never broadcast, on the traffic girl. The written statement is to the effect that the traffic girl kept a memorandum of all commercials she needed to schedule later, and that he (Mr. Webb) thought make-goods were being run. As the findings show, while the traffic girl recalled that on rare occasions Mr. Webb would tell her to run a given number of spots for an account as make-goods for spots that had been missed, such explanation does not relate to the many deletions of spots from the logs that were made by Mr. Webb which, according to his prior oral statements, were never broadcast. At the time of this written explanation from Mr. Webb, Mrs. Golden, the traffic girl, was no longer employed at the station. Although the record does not reveal the date when Mr. Webb destroyed all of the short lists, such had apparently been destroyed some time prior to his written explanation. As it happened, the Commission's investigators had picked

up two short lists during the course of their investigation and had retained copies of the same when all of the records of WVLK were returned to the station in late March 1968. These two original "short lists" that had been returned to the station were also apparently destroyed by Mr. Webb. A comparison of the copies of these two short lists with the program logs for those days confirm Mr. Webb's prior oral statements, and Mrs. Golden's testimony, to the effect that (1) spots deleted by Mr. Webb from the log were not placed on the short list, and (2) spots not on the short list were added to the log. Thus, it is apparent that Mr. Webb's written statement submitted June 25, 1968 fails in its attempt to lay the blame for the fraudulent billing on the traffic girl.

16. In its response to the Commission's inquiry of March 20, 1968, the licensee set forth a description of the procedures supposedly followed in the matter of advertiser billings, and said response was followed by an admission that the described procedures had not been carried out in many instances. The response also contained a comprehensive dollars and cents report of the overbillings that had resulted, and the tenor of the licensee's response unquestionably admitted that Station WVLK had overbilled its advertisers. While said response stated that it was difficult to ascertain the extent to which the fault for the overbilling lay with Mr. Webb, Mrs. Hensley or Mrs. Golden, or the extent to which these practices were the product of carelessness or were intentional, Bluegrass stated that a serious practice had been permitted to occur for which Mr. Webb was the responsible official, and that he had been relieved of his managerial responsibilities and duties. The response acknowledged that the ultimate responsibility for the operation of the station must rest with it as the licensee. Bluegrass later admitted that it relied upon station personnel, chiefly Mr. Webb, in composing its reply to the Commission's inquiry as to the procedures followed in its billings. When the logs and invoices were returned and it became apparent that overbilling had taken place, Bluegrass concentrated its attention on ascertaining the extent of such overbilling. The licensee explained that the reason it did not submit an affidavit of Mr. Webb with its reply was because they had come to disbelieve him, and for the same reason they submitted his statement, pursuant to Commission request, without comment.

17. The findings further show that when Mr. Kincaid was informed that the Commission's investigators had found some instances where accounts had been overbilled, he instructed Mr. Hagan, president of GMA, and vice president of Bluegrass, to find out what the problem was and correct it. Mr. Hagan and Mr. Clines went to the station and talked with various personnel, including Mr. Webb, in order to learn about and follow the station's practices from the time a sales order was taken until the announcements were logged and later billed. They stated that their purpose during this initial period was to discover the problem area and to take corrective action rather than to determine responsibility. It was during this investigation that Mr. Hagan and Mr. Clines learned that the station had been preparing its bills from the contracts or start orders rather than from the logs, and they immediately, beginning with the month of October 1967, initiated the practice of preparing bills directly from the program logs. It also appears from the record that the licensee's investigation of the proce-

dures that were in effect at the station with respect to billing occurred during the time when the essential station records were in the Commission's files in Washington after having been removed from the station by the investigators on September 29, 1967. It further appears that upon the return of these station records to the licensee, the latter engaged in a crash project to ascertain the extent of the overbilling that had taken place. Their concern at this time principally appeared to be correcting the various discrepancies that had occurred, since the old procedures admittedly had broken down and had been replaced by a new logging and billing system.

18. With respect to Issue 3 it is concluded that there was a misrepresentation in the written statement of Mr. Webb which conflicted with the true situation that existed at the station with respect to the overbilling of advertisers; that said misrepresentation was made for the express purpose of misleading the Commission; and that said statement was written with the sole intent of attempting to cover up his misdeeds. As an official and a stockholder of Bluegrass, Mr. Webb's misrepresentation and lack of candor must be attributed to the licensee. It is further concluded that the officials of Bluegrass did not make the thorough investigation of the situation that existed at the station as to the procedures involved in the overbilling, as it claimed. Instead, it relied on station personnel, particularly Mr. Webb, in preparing its reply to the Commission's inquiry, and it did this at a time when it should have known that Mr. Webb could not be believed. It is true that all the station's records were in the Commission's possession at this time, but when they were returned to the licensee the investigation should have continued. Instead, the licensee concentrated its attention on ascertaining the amount of the overbilling, to the exclusion of the hows and whys of such overbilling. Its reply gave the procedures supposedly followed, and admitted that such procedures had not, in fact, been followed in many instances, and then proceeded to give the corrective measures that had been taken. While not a misrepresentation, in the strict sense of the word, the conduct of Bluegrass was seriously deficient in its failure to assure itself that its response to the Commission inquiry was truthful in all respects.

Issue 4—Falsification of Program Logs

19. The findings reveal that the logs of WVLK were falsified on six days in August 1967. Such falsification occurred when Mr. Webb ordered that 40-second spots rather than 60-second spots would be sold to local accounts, and simultaneously ordered the traffic girl to log all local spots as 40 seconds even though there had been no change in either continuity or contract. After several arguments with Mr. Webb over this procedure, Mr. Stakelin instructed the traffic girl to log all local announcements as 60 seconds until new sales orders specifying the shorter length could be secured.

20. It is concluded that the logs of the station were falsified with respect to the length of commercial spot announcements on six days in August 1967, and that such falsification occurred as a result of conduct by Mr. Webb, an officer and stockholder of Bluegrass, the licensee.

Issue 5—Logging Practices

21. The logging violations that are detailed in findings 67 through 72 were the subject of a stipulation between counsel for Bluegrass and the Bureau, and thus are admitted as violations. By way of explanation or mitigation, Bluegrass stated that: the practice of the station was to show commercial matters, both typed and handwritten on the program logs, in red ink and other matters in black ink; with respect to public service announcements, they did not understand it to be necessary to list the full name of the organization involved, and thought it permissible to log "Savings Bonds" rather than "United States Treasury Department," and to use unambiguous abbreviations, such as "T.B." for tuberculosis announcements; the practice was to identify the station over the air many times each hour, including identifications on the hour and half-hour at the news breaks; and, it was their understanding that a handwritten entry which altered the typed information on the log (such as the handwritten deletion of one commercial message and the substitution of another commercial message) was a "correction" of the log, to be initialed by the person making the alteration, but that a handwritten addition to the log prior to broadcast (such as the addition of a commercial message) was not a "correction" of the log requiring such initials.

22. It is concluded that during the periods June 12–18 and July 10–16, 1967 WVLK committed several logging infractions, including, failure: to show length of commercial messages; to identify announcements as commercial; to name sponsors of PSAs; to log station identifications; and to initial log corrections.

Issue 6—Public Service Announcements (PSAs)

23. The findings reveal that in the 1964 renewal application, WVLK stated there would be no substantial change in policy with respect to PSAs from that contained in the 1963 composite week. The 1963 composite week showed a total of 113 PSAs, spread on the following percentage basis:

8:00 AM–6:00 PM	62%
6:00 PM–11:00 PM	23%
All Other Hours	15%

Although the record shows that the PSAs broadcast during the years 1964 to 1966 increased to 116, 194 and 191, respectively, the number broadcast between 8:00 AM and 6:00 PM declined, and those broadcast between 11:00 PM and 8:00 AM increased. On a percentage basis the PSAs during the 8:00 AM to 6:00 PM time period declined from a promised 62% to 26%, while the 11:00 PM to 8:00 AM period increased from a promised 15% to 60%.

24. Also, when WVLK filed its 1967 renewal application, it advised the Commission that there would be no substantial change in its public service announcement policy from that reflected in the 1966 composite week. However, in 1966, 191 PSAs were broadcast, while the 1967 composite week showed that only 97 such announcements were broadcast. Further, 65 PSAs were broadcast in 1966 between 6:00 AM and 6:00 PM, while in 1967 there were only 19 broadcast. The findings further show that an analysis of the program logs for June 1967, approximately one month after the station filed its license renewal appli-

cation, reveals that for the entire month only 4 PSAs were broadcast between 6:00 AM and 6:00 PM, 40 were broadcast between 6:00 PM and 11:00 PM, while 219 PSAs were broadcast between 11:00 PM and 6:00 AM. This action was taken with the knowledge that placing PSAs in the late night-early morning time period minimized their effectiveness. Neither GMA nor anyone else representing controlling ownership employed independent checks or supervisory controls over the station with respect to any phase of its operation, except financial. Instead, all was left to Messrs. Webb and Grizzard, and particularly Mr. Webb after he became general manager in February 1966.

25. As to Issue 6, it is concluded that Bluegrass did not conform to its proposals regarding public service announcements, especially as proposed in its 1967 license renewal application.

Issue on Programming

26. The findings show that the principal elements of public service programming broadcast by Station WVLK were: an extensive local news service; deployment of the mobile van from early morning until late at night to cover news and community events on a continuous basis; the daily Man-on-the-Street interview program; the Arty Kay morning show with conversation and interviews regarding community activities; remote broadcasts from several annual community events and other services to community organizations; a heavy schedule of local sports programs including high school and University of Kentucky football and basketball games; a variety of other regular and special program services for the local schools; a daily early morning farm program and special programs throughout the year, particularly during the tobacco market season; religious features throughout the day, seven days a week, and on Sunday programs (network) of religious news, choral music and a worship service; daily social calendar, hospital news, lost pet and job opportunities programs; some eighteen other daily or weekly program series from the CBS network or syndicated sources, including Georgetown University Forum, Face the Nation, other CBS public affairs programs, the hourly weekend Dimension programming of CBS, network features throughout the weekday and Arthur Godfrey Time; and, the only all-night program service in the Central Kentucky area.

27. The record further reveals that most of these program services date back ten years or more, to the 1950's. The consistency and diversity of this programming are reflected in the renewal applications of Station WVLK which show that over 30% of the program time has regularly been devoted to categories of programming other than "entertainment"; that about 17% of the station's program effort has regularly been devoted to programming designed to "inform the electorate," i.e. news and discussion; and that approximately 15% of the broadcast operation has been devoted to locally produced programs.

28. The record reflects the testimony of many witnesses attesting to the public service programming of the station, and to the wide variety of community organizations for which programs have been provided. The testimony of these witnesses shows that WVLK has been earnest and aggressive in its efforts to serve the community, that the station

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has presented the news and issues fairly, and that its facilities have been freely available for all to use.

29. With respect to the programming issue, it is concluded that WVLK has an excellent record of providing meritorious public service programs to the listeners in its service area.

Issue 7—Licensee Responsibility in Management

30. This issue was added by the Commission to determine whether Bluegrass has exercised reasonable licensee responsibility in the management of Station WVLK. The findings show that the present ownership took over control of the station in 1952. Messrs. Kincaid, Worster, Grizzard and Webb were the principals involved. Mr. Kincaid, being the majority stockholder, acquired the other members of his organization on the basis of their experience and competence. Mr. Grizzard, who had previous broadcast experience, was made general manager of the station and served as such until February 1966. He became vice president of Bluegrass in 1964 and president of the organization in 1967. Mr. Worster formed General Management Associates (GMA) which performed management, accounting and tax services for various Kincaid enterprises. He had general supervisory responsibility, as distinguished from day-to-day operation, for the licensee and was made president in 1960. Mr. Webb began his duties with the organization as a salesman. He was made sales manager in 1954 and became general manager of the station in February 1966. He became a vice president of Bluegrass in 1964 and is a 2% stockholder. At the time this group took over Station WVLK, Mrs. Sara Hensley was bookkeeper for the former owners and she remained with the new organization in that position until August 1967. This complement of personnel functioned as an operating team for the next 15 years. There was little or no turnover in all key positions and a successful and stable operation was effectuated, and an excellent record of public service was compiled. The various members of the organization proved themselves in their respective positions and the licensee justifiably came to have confidence in them. As a result of that confidence, Bluegrass did not impose strict supervision over the performance of their duties.

31. The licensee also retained Washington communications counsel in 1960 in order to have professional guidance in the conduct of its affairs, and said counsel diligently worked with station management and all personnel by means of letters and trips to Kentucky to see that the station functioned properly. The record shows that the overbilling in 1967 was the first blemish on the record of WVLK during its nearly 20 years of operating the station, and such irregularities resulted from aberrational acts on the part of Mr. Webb that could not reasonably have been expected, as they were so contrary to his performance during his many years past experience at the station.

32. It is beyond dispute that the controlling ownership of Bluegrass did not institute independent checks or supervisory controls over the operation of WVLK. Rather such operation was left in the long-time, entrusted employees, Messrs. Webb and Grizzard. The record shows that such trust was misplaced, insofar as Mr. Webb is concerned, because it was during his tenure of office as general manager that the derelictions forming the basis for the present action occurred. It was

Mr. Webb who was directly responsible for falsifying WVLK's program logs. It was Mr. Webb who was also guilty of making misrepresentations to the Commission in his statements concerning procedures involving the fraudulent billing. It was Mr. Webb who made the deletions from the logs, and failed to record such deleted spots on the short list. It was Mr. Webb who failed to notify anyone concerned when he deleted spots from the log, and who permitted the practice of billing from the contracts or orders rather than from the program logs, and it was Mr. Webb who permitted the practice of not checking the billings against the program logs.

33. On the part of management, or controlling ownership of Bluegrass, it was observed that: the billing system had been in operation for nearly 20 years and, in fact, was in operation at the time the present ownership acquired an interest in the station; that the station's sold-out time periods, which developed in the early 1960's, were on Thursdays and Fridays, and the "run-of-schedule" advertisements sold by WVLK could be accommodated by the weekend; the sales manager (Mr. Webb) was in personal charge of the administration of the scheduling process, rather than delegating details to a traffic or bookkeeping clerk; Mr. Webb and other station personnel were observed dealing with the matter in a businesslike way; the same bookkeeper, Mrs. Hensley, had been with the station for many years, and she and Mr. Webb had worked closely together for a long time; there was never a complaint from an advertiser or station employee that the billing system was not functioning properly; and over the years Washington counsel had issued letters apprising station management of the Commission's requirements with respect to billing practices. Based on the foregoing observations, Bluegrass concluded that WVLK was adequately supervised and counseled, was in the hands of qualified and proven broadcast personnel, and was being operated in a highly proper and first-rate manner.

34. It appears strange that Mrs. Hensley, the trusted employee who worked with minimum supervision, failed to report to the controlling management group the derelictions that she evidently knew were taking place. Mrs. Hensley must have known about the overbilling because it was her report to the Commission shortly after leaving the station that led to the field investigation of September 1967. Yet she advised no one.

35. It is concluded with respect to this issue that Bluegrass did not exercise the required degree of responsibility in overseeing the management of the station, and that the confidence it reposed in Mr. Webb, a stockholder, officer and general manager of the station, was misplaced, particularly with reference to the year 1967.

36. As subsequent events prove, Bluegrass made its original mistake when it took over WVLK in 1952 and continued the practice of billing advertisers from the contracts or start orders that the former owners had instituted. However, such practice appeared to be effective and practical until the 1960's when the "short list" came into use by station personnel. Even at that time, a different method of billing probably would not have produced different results because the "short list" was not extensive, being confined to Thursdays and Fridays, and was being accommodated by the weekend. It was only when the "short list"

became more extensive, and could not be so accommodated, that the billing system used broke down and became unworkable. And it was at this point that the machinations of Mr. Webb came into play, and advertisers were billed for ads that were not broadcast or that were not broadcast in the agreed upon time segment. Although the ownership group, other than Mr. Webb, did not know of or suspect what was taking place, since Mr. Webb is both an officer and stockholder of Bluegrass, and was given free rein in running the station, the licensee must be charged with his actions. From the foregoing findings and conclusions, it is evident that Bluegrass did not exercise the degree of responsibility over the operation of Station WVLK that the Commission requires and expects.

37. Of the foregoing issues, the fraudulent billing, the misrepresentation or lack of candor, and the exercise of reasonable licensee responsibility are the more serious violations, although any violation of the Commission's Rules is not to be condoned. With respect to the three aforesaid issues, the fraudulent billing and misrepresentation were directly and solely the results of actions by Mr. Webb, which are unexplainable, while the lack of exercise of reasonable licensee responsibility on the part of Bluegrass permitted such results. The Commission expects and requires a licensee to retain control of the management and operation of its station and to be familiar with all phases of that operation. Controlling ownership of Bluegrass negligently did not have either the knowledge or control of WVLK that the Commission requires. Instead it relied entirely upon a trusted and long-time official and minor stockholder to see that the station was operated in an efficient and orderly manner and in accordance with the Commission's Rules. On the basis of such conduct the Commission, without more, would be justified in revoking the license of Bluegrass. However, it has been found and concluded that Bluegrass immediately took the necessary steps to correct the situation as soon as the same was brought to its attention.

38. The licensee was derelict in the degree of responsibility it exercised over the operation of the station, and imposed too much confidence and trust in Mr. Webb, which were misplaced. However, when it is considered: that for many years Mr. Webb has responsibly carried out his duties; that his aberrational actions took place during the time when the other broadcast operations of Bluegrass were experiencing difficulties and required most of its time and energy; that on being informed by Commission investigators that advertisers were being overbilled, Bluegrass immediately took steps to correct the situation, and instituted a new billing procedure to prevent overbilling; that it undertook a crash program of instituting computerized studies to ascertain the extent of such overbilling; that it made restitution to the advertisers that had been fraudulently overbilled; that it relieved Mr. Webb and Mr. Grizzard of their positions and installed new management; that it cooperated with Commission personnel in all phases of the investigation; that in the context and circumstances under which Bluegrass advised the Commission of the billing procedures and submitted the letter from Mr. Webb, without any comment, it is clear that there was no deliberate intent to mislead the Commission nor was there a lack of candor on the part of the licensee, although the same

cannot be said of Mr. Webb, it is concluded that the drastic sanction of revocation of WVLK's license is not called for. While Bluegrass did not institute procedures at a much earlier date, as it now appears, that would have prevented the overbilling, it is highly appropriate that the Commission distinguish between deliberate attempts to deceive, and mere inadvertences, carelessness or preoccupation with other matters in reports made to it. The report of Bluegrass in response to the Commission's request of March 20, 1968 falls in the latter category.

39. Normally, in a case such as this, there are four actions that can be taken; (1) full renewal; (2) short term renewal; (3) monetary forfeiture of up to $10,000; and (4) revocation. A review of Commission precedent in similar or worse actions reveals that in a majority of cases, a forfeiture has been assessed against the licensee. However, in this case, the Commission did not allow a monetary forfeiture to be imposed, even though the licensee stated it would waive the one-year statute of limitations.

40. In view of the conclusion that revocation of the license is not called for in this proceeding, and the Commission had not added a major monetary forfeiture provision, it is concluded that based on the entire record herein, the sanction of a short term renewal of the license of Station WVLK must be imposed. Such short term renewal will give the Commission an opportunity for an early review of the way in which the new management and procedures that have been established by Bluegrass are operating and whether all provisions of the rules are being complied with in that operation.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by any of the parties or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Bluegrass Broadcasting Co., Inc. for renewal of the license of Radio Station WVLK at Lexington, Kentucky, IS HEREBY GRANTED for a period to expire on the first day of the first even month one year following the effective date thereof.

FEDERAL COMMUNICATIONS COMMISSION,
MILLARD F. FRENCH, *Hearing Examiner.*

F.C.C. 73–1225

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice to
BOARD OF REGENTS, UNIVERSITY SYSTEM OF GEORGIA ON BEHALF OF THE GEORGIA INSTITUTE OF TECHNOLOGY
Concerning Combination Rates

NOVEMBER 21, 1973.

BOARD OF REGENTS,
UNIVERSITY SYSTEM OF GEORGIA FOR AND ON BEHALF OF THE GEORGIA INSTITUTE OF TECHNOLOGY
RADIO STATION WGST,
P.O. Box 7888,
Atlanta, Ga. 30309

GENTLEMEN: This is with reference to the letter of July 25, 1973, by your attorney in regard to the Commission's letter of July 18, 1973, concerning the use of combination rates by WGST and WPCH(FM).

As you will recall, the Commission concluded that WGST and WPCH(FM) serve the same area and that your use of combination rates was in violation of its policy adopted January 30, 1963, in which the Commission stated that combination rate agreements or practices by independent stations serving the same area raise serious questions under the policies underlying the anti-trust laws (15 U.S.C. 1), conflict with established Commission policy, and are contrary to the public interest.

It appears from the reply that you have discontinued the use of combination rates. However, your attorney contends that the offering of a combination rate without a discount is not a violation of 1963 policy and requests reconsideration of the Commission's action.

We have considered the request, but we are not persuaded to authorize the use of combination rates by WGST and WPCH(FM). As we stated previously, any combination rate, whether or not a discount is offered, is a violation of the policy.

Commissioner H. Rex Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1262

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of FORMULATION OF POLICIES RELATING TO THE BROADCAST RENEWAL APPLICANT, STEMMING FROM THE COMPARATIVE HEARING PROCESS	Docket No. 19154

THIRD FURTHER NOTICE OF INQUIRY

(Adopted November 29, 1973; Released November 30, 1973)

BY THE COMMISSION:

1. In our *Notice of Inquiry*, 27 F.C.C. 2d 580 (1971), and *Further Notice of Inquiry*, 31 F.C.C. 2d 443 (1971), we invited comments on a proposal to establish quantitative standards for television stations in the areas of local programming and informed electorate (informational) programming. In our *Second Further Notice of Inquiry*, released October 9, 1973, 38 Fed. Reg. 28325, we noted that our initial *Notice* included several statistical tables on stations' News, Public Affairs and Local Programming for composite weeks in 1968, 1969 and 1970.

2. In order to update these statistics, we issued a questionnaire to all commercial television licensees, soliciting program information for the Commission's 1972–73 composite week. The composite week used in the report is as follows: Monday, December 4, 1972; Tuesday, March 27, 1973; Wednesday, August 9, 1972; Thursday, May 31, 1973; Friday, October 13, 1972; Saturday, January 6, 1973; and Sunday, April 18, 1973. The filing date for the questionnaire was November 19, 1973. By November 22, 1973, 514 usable questionnaires had been received and have now been tabulated. (An additional 60 questionnaires were either obviously incorrect or were filed later.)

3. The tabulations based on these questionnaires are given in the attached tables. Reporting stations were asked to use the same definitions for "news," "public affairs," "other non-entertainment," and "local" as is used in the Application for Renewal, FCC Form 303, dated February 1969. Identification of individual stations was not required, but each station coded its questionnaire to indicate its proper group (e.g., VHF Affiliate, Top 50 Markets, Revenue Below $5 Million).

4. Information was requested for three time periods: 6 AM to Midnight, 6 PM–11 PM (5 PM–10 PM Central and Mountain time zones) and Midnight to 6 AM. Because of the wide range in reported program minutes during the Midnight to 6 AM time period, percentages based on these minutes may be misleading and, therefore, are not attached. However, the minutes programmed during the Midnight to 6

AM and 6 AM to Midnight periods have been combined to give the data for a Sign On to Sign Off time period.

5. In our *Order Extending Time for Filing Comments and Reply Comments* released November 6, 1973, 38 Fed. Reg. 31203, which extended the filing dates herein to December 19, 1973, and January 7, 1974, respectively, we noted that this extension would give interested parties an opportunity to examine the questionnaire results prior to submitting comments. The tables attached give a rather complete summary of the questionnaires. Moreover, the questionnaires, computer printouts, and the individual punch cards are available for copying in the Broadcast Bureau's Research Branch, Room A–340, 1229–20th Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

SUMMARY: *Medians for "% news"; "% public affairs" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
% News—Commercials Included								
6 am to midnight	13.8 (15.7–11.4)	11.3 (13.9–8.1)	11.5 (13.3–9.0)	11.3 (12.8–8.0)	9.8 (12.3–6.9)	8.8 (11.1–6.4)	5.4 (7.2–4.9)	2.3 (8.2–0.8)
Sign on to sign off	12.7 (14.6–10.7)	10.7 (13.1–8.0)	11.2 (13.0–8.9)	10.8 (12.7–8.1)	9.5 (12.1–6.7)	8.4 (10.4–6.3)	6.3 (7.0–4.9)	2.3 (8.2–0.9)
6 pm to 11 pm	18.9 (24.8–15.6)	15.3 (18.0–10.0)	15.7 (17.1–13.6)	14.6 (16.8–13.0)	13.8 (15.8–7.8)	14.1 (15.7–9.7)	9.5 (14.7–2.3)	0.4 (8.5–0.0)
% News—Commercials Excluded								
6 am to midnight	11.2 (13.0–9.3)	9.5 (11.8–6.9)	9.7 (11.0–7.4)	9.4 (10.6–6.3)	7.8 (10.5–5.2)	7.1 (9.3–5.0)	4.8 (5.9–4.0)	2.0 (7.2–0.8)
Sign on to sign off	10.3 (12.2–8.8)	9.2 (11.2–7.0)	9.3 (10.9–7.2)	9.0 (10.6–6.1)	7.7 (10.4–5.3)	7.0 (8.8–5.1)	5.5 (5.8–4.1)	2.1 (7.0–0.9)
6 pm to 11 pm	15.0 (19.6–12.2)	12.2 (14.1–8.0)	12.4 (13.6–10.6)	11.7 (13.6–9.8)	10.9 (12.9–6.1)	11.2 (12.4–8.0)	7.4 (12.6–1.8)	0.4 (7.3–0.0)
% Public Affairs—Commercials Included								
6 am to midnight	6.1 (8.4–3.9)	5.3 (6.8–3.7)	4.4 (5.6–3.2)	4.1 (5.1–2.8)	4.3 (5.5–3.3)	4.2 (5.7–3.1)	5.6 (8.2–3.3)	2.8 (4.8–1.0)
Sign on to sign off	5.8 (7.6–3.7)	4.9 (7.0–3.5)	4.3 (5.5–3.0)	3.9 (4.9–2.8)	4.2 (5.3–3.2)	4.0 (5.4–2.9)	5.3 (7.2–3.2)	2.8 (4.9–1.2)
6 pm to 11 pm	7.3 (10.5–1.4)	8.3 (9.8–2.8)	5.7 (9.2–1.4)	4.4 (9.7–1.4)	7.4 (9.7–1.4)	8.4 (8.9–2.5)	1.7 (4.7–0.0)	1.4 (5.3–0.0)
% Public Affairs—Commercials Excluded								
6 am to midnight	5.3 (7.6–3.7)	5.0 (6.2–3.4)	4.0 (5.1–3.0)	3.7 (4.7–2.6)	4.0 (5.0–3.0)	3.9 (5.1–2.9)	5.0 (6.7–3.2)	2.5 (4.5–0.9)
Sign on to sign off	5.3 (6.7–3.4)	4.7 (6.7–3.2)	3.9 (5.0–2.8)	3.7 (4.5–2.7)	3.9 (4.8–2.9)	3.6 (4.7–2.7)	4.7 (6.3–3.0)	2.7 (4.5–1.2)
6 pm to 11 pm	6.7 (9.3–1.3)	7.2 (8.9–2.6)	5.0 (8.4–1.4)	4.2 (8.6–1.4)	5.8 (8.6–1.4)	7.2 (7.9–2.3)	1.7 (3.6–0.0)	1.4 (5.0–0.0)
Number of Stations	86	38	173	71	31	57	19	39

SUMMARY: *Medians for "% other non-entertainment"; "% local including entertainment" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
% Other Non-Entertainment—Commercials Included								
6 am to midnight	10.1 (13.4–7.9)	9.1 (12.9–6.7)	9.5 (12.3–6.6)	8.8 (11.1–6.0)	7.8 (12.9–5.5)	9.6 (13.7–6.3)	8.3 (13.0–5.1)	7.2 (14.8–2.8)
Sign on to sign off	9.6 (12.4–7.8)	9.3 (12.0–6.8)	9.4 (11.8–6.4)	8.8 (11.0–5.8)	7.3 (11.8–5.3)	9.1 (12.8–6.1)	9.6 (13.8–4.9)	6.9 (14.3–2.8)
6 pm to 11 pm	1.4 (4.1–0.0)	0.1 (2.6–0.0)	0.7 (2.9–0.0)	1.4 (2.9–0.0)	0.5 (2.0–0.0)	1.3 (2.9–0.0)	1.4 (4.7–0.0)	1.4 (14.9–0.0)
% Other Non-Entertainment—Commercial Excluded								
6 am to midnight	9.4 (12.6–7.3)	8.5 (11.9–6.0)	8.7 (11.2–6.2)	7.9 (10.6–5.6)	7.2 (12.2–5.3)	8.5 (12.1–5.8)	8.0 (12.4–4.6)	6.0 (14.1–2.7)
Sign on to sign off	9.2 (11.5–7.1)	8.7 (11.4–6.3)	8.7 (10.9–6.0)	7.9 (10.4–5.5)	7.0 (11.2–5.1)	8.3 (11.3–5.5)	8.7 (12.8–4.3)	6.2 (13.6–2.7)
6 pm to 11 pm	1.2 (3.5–0.0)	0.0 (2.3–0.0)	0.7 (2.5–0.0)	1.1 (2.6–0.0)	0.5 (1.8–0.0)	1.1 (2.8–0.0)	1.4 (4.3–0.0)	1.0 (14.2–0.0)
% Local Including Entertainment—Commercials Included								
6 am to midnight	16.1 (20.0–14.2)	13.0 (16.7–10.7)	10.9 (13.8–8.2)	9.2 (13.7–6.2)	9.1 (13.5–7.4)	8.2 (18.1–4.6)	18.5 (26.5–13.2)	12.0 (24.5–4.8)
Sign on to sign off	15.4 (20.4–13.4)	12.7 (16.9–11.1)	10.8 (13.3–8.2)	9.1 (13.9–6.4)	9.4 (13.2–7.4)	7.8 (18.7–4.4)	17.6 (25.9–13.8)	13.8 (24.3–4.8)
6 pm to 11 pm	17.1 (21.4–11.4)	9.9 (14.3–7.0)	9.5 (14.9–7.1)	8.6 (18.0–7.1)	8.5 (12.7–3.9)	8.6 (19.8–4.1)	18.3 (22.8–3.8)	9.9 (20.5–1.5)
% Local Including Entertainment—Commercials Excluded								
6 am to midnight	13.5 (17.8–11.9)	11.6 (14.4–8.9)	9.2 (11.4–6.6)	7.6 (11.8–5.1)	8.0 (11.3–5.9)	7.3 (16.7–3.8)	15.8 (21.4–11.4)	9.8 (20.8–4.4)
Sign on to sign off	13.1 (17.8–11.5)	11.2 (15.0–9.0)	9.1 (11.5–6.6)	7.6 (11.5–5.2)	8.0 (11.3–6.1)	6.9 (16.5–3.6)	15.7 (21.8–11.7)	9.8 (19.8–4.5)
6 pm to 11 pm	14.1 (17.7–9.2)	8.2 (11.3–5.8)	7.6 (11.1–5.7)	7.0 (15.4–5.4)	6.6 (9.6–3.4)	6.9 (15.7–3.3)	14.5 (20.5–3.4)	5.7 (17.5–1.4)
Number of stations	83	38	173	71	31	57	19	39

SUMMARY: *Medians for "% news and public affairs" and "% news, public affairs and other non-entertainment" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
% News and Public Affairs Combined—Commercials Included								
6 am to midnight	19.8 (22.9–16.8)	17.1 (19.8–13.9)	15.7 (18.4–13.3)	15.4 (17.1–12.5)	13.9 (17.3–11.0)	13.0 (16.6–10.9)	11.4 (13.8–8.6)	6.4 (15.0–3.0)
Sign on to sign off	18.4 (20.9–16.3)	16.1 (19.0–13.7)	15.4 (17.5–13.1)	14.8 (16.9–12.4)	13.7 (16.3–10.7)	12.3 (15.8–10.6)	11.5 (13.4–9.1)	6.6 (14.6–4.0)
6 pm to 11 pm	26.1 (33.4–20.1)	22.2 (25.3–17.2)	20.2 (25.4–16.1)	20.5 (26.2–16.6)	18.1 (23.1–15.7)	19.0 (23.7–15.7)	10.8 (18.7–3.3)	4.4 (12.6–0.5)
% News and Public Affairs Combined—Commercials Excluded								
6 am to midnight	16.7 (19.0–14.3)	14.8 (17.3–12.0)	13.6 (15.7–11.3)	13.2 (14.5–9.8)	11.1 (15.0–9.2)	11.2 (14.0–9.0)	9.9 (12.4–7.9)	6.1 (13.7–2.8)
Sign on to sign off	15.5 (17.6–13.8)	13.9 (16.9–11.8)	13.3 (15.2–11.3)	12.8 (14.2–9.9)	11.0 (14.5–8.9)	10.7 (13.3–9.0)	9.7 (12.0–7.9)	6.1 (13.4–3.8)
6 pm to 11 pm	21.8 (27.5–16.1)	19.0 (21.6–14.4)	16.6 (21.3–13.1)	17.0 (22.1–13.7)	15.3 (19.2–12.3)	15.6 (20.0–13.1)	8.9 (14.5–3.0)	4.2 (11.8–0.4)
% News, Public Affairs and Other Non-Entertainment Combined—Commercials Included								
6 am to midnight	29.9 (34.0–26.2)	25.3 (29.1–23.5)	25.0 (29.0–21.6)	23.8 (28.2–20.4)	23.3 (28.0–17.8)	23.1 (27.1–20.3)	19.7 (25.5–17.1)	15.7 (31.4–10.9)
Sign on to sign off	28.8 (31.3–25.1)	24.9 (29.2–22.5)	24.3 (28.2–21.4)	23.8 (27.6–19.6)	22.4 (26.9–17.8)	22.6 (25.7–19.4)	19.8 (26.3–16.2)	15.3 (31.8–11.0)
6 pm to 11 pm	28.1 (34.5–22.8)	23.1 (27.3–17.4)	22.7 (27.3–17.1)	22.9 (28.4–17.3)	20.1 (24.6–16.6)	22.1 (24.9–17.9)	12.6 (23.0–7.4)	9.3 (22.3–2.8)
% News, Public Affairs and Other Non-Entertainment Combined—Commercials Excluded								
6 am to midnight	26.2 (29.8–22.1)	22.5 (27.0–21.2)	22.4 (26.1–19.2)	21.1 (24.8–17.3)	20.8 (25.5–15.5)	20.0 (23.4–17.7)	17.3 (24.3–15.2)	14.7 (27.7–9.9)
Sign on to sign off	25.1 (27.5–21.7)	22.1 (26.6–20.3)	21.7 (24.9–18.6)	20.8 (24.2–16.5)	19.6 (24.9–15.2)	19.1 (22.4–17.1)	17.3 (24.5–14.2)	14.3 (28.4–10.0)
6 pm to 11 pm	23.2 (28.7–18.4)	19.9 (22.9–14.6)	18.5 (23.1–14.2)	19.0 (23.2–14.4)	16.8 (20.1–14.2)	18.0 (21.4–14.3)	10.5 (18.1–6.2)	8.4 (21.6–2.3)
Number of Stations	86	38	173	71	31	57	19	39

SUMMARY: *Medians for "% local news" and "% local public affairs" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
%Local News—Commercials Included								
6 am to midnight	8.5 (9.9–7.1)	6.7 (7.9–5.5)	5.9 (7.3–4.6)	5.2 (6.6–4.3)	5.1 (6.1–4.2)	4.2 (5.4–2.7)	5.4 (7.2–4.9)	2.1 (6.2–0.5)
Sign on to sign off	8.0 (9.7–6.8)	6.7 (7.8–5.2)	5.8 (7.2–4.6)	5.1 (6.7–4.1)	5.1 (6.3–4.3)	4.0 (5.2–2.8)	6.2 (7.0–4.9)	2.1 (6.2–0.6)
6 pm to 11 pm	11.3 (16.5–8.2)	7.1 (9.9–3.1)	7.5 (10.7–6.3)	7.1 (9.8–6.5)	6.8 (9.0–0.8)	6.8 (7.4–2.8)	9.5 (14.7–2.3)	0.2 (5.7–0.0)
%Local News—Commercials Excluded								
6 am to midnight	6.8 (8.1–5.5)	5.7 (6.7–4.2)	4.7 (5.8–3.7)	4.3 (5.2–3.3)	4.0 (5.0–3.3)	3.4 (4.3–2.3)	4.8 (5.9–4.0)	1.9 (5.9–0.4)
Sign on to sign off	6.4 (7.8–5.3)	5.7 (6.7–4.4)	4.6 (5.8–3.7)	4.2 (5.2–3.1)	4.0 (5.1–3.4)	3.3 (4.2–2.5)	5.5 (5.7–4.0)	1.9 (5.9–0.4)
6 pm to 11 pm	9.0 (13.0–6.4)	6.0 (7.9–2.5)	5.8 (8.0–4.7)	5.7 (7.9–5.1)	5.1 (7.4–0.6)	5.2 (5.9–2.2)	7.4 (12.6–1.8)	0.2 (4.7–0.0)
%Local Public Affairs—Commercials Included								
6 am to midnight	2.6 (4.1–1.2)	2.0 (3.3–1.2)	1.3 (2.4–0.5)	0.8 (1.8–0.4)	1.2 (2.1–0.5)	1.0 (2.5–0.1)	3.7 (5.7–1.7)	1.3 (3.3–0.1)
Sign on to sign off	2.5 (4.0–1.3)	2.0 (3.4–1.2)	1.3 (2.3–0.6)	0.9 (1.7–0.4)	1.2 (2.0–0.4)	1.0 (2.3–0.1)	3.5 (5.1–1.8)	1.6 (3.2–0.1)
6 pm to 11 pm	1.4 (3.0–0.0)	1.4 (2.0–0.0)	0.4 (1.4–0.0)	0.0 (1.5–0.0)	0.5 (1.4–0.0)	0.0 (1.4–0.0)	1.4 (4.3–0.0)	0.0 (2.8–0.0)
%Local Public Affairs—Commercials Excluded								
6 am to midnight	2.3 (3.8–1.2)	1.9 (3.3–1.2)	1.2 (2.3–0.5)	0.8 (1.7–0.4)	1.2 (2.0–0.5)	0.9 (2.3–0.1)	3.7 (5.5–1.6)	1.3 (3.1–0.1)
Sign on to sign off	2.2 (3.7–1.1)	1.8 (3.2–1.2)	1.3 (2.1–0.6)	0.8 (1.6–0.4)	1.2 (1.8–0.4)	0.8 (2.1–0.1)	3.5 (4.8–1.8)	1.5 (3.0–0.1)
6 pm to 11 pm	1.4 (2.7–0.0)	1.3 (1.8–0.0)	0.4 (1.4–0.0)	0.0 (1.4–0.0)	0.5 (1.4–0.0)	0.0 (1.4–0.0)	1.4 (3.3–0.0)	0.0 (2.6–0.0)
Number of Stations	86	38	173	71	31	57	19	39

SUMMARY: *Medians for "% local other non-entertainment" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
% Local Other Non-Entertainment—Commercials Included								
6 am to midnight	2.9 (5.5–1.4)	2.4 (3.9–1.8)	2.1 (3.9–0.8)	1.5 (4.6–0.2)	2.0 (3.7–0.6)	1.3 (5.4–0.0)	1.5 (5.1–0.4)	1.5 (3.7–0.1)
Sign on to sign off	3.4 (5.1–1.7)	2.6 (3.8–1.7)	2.1 (3.9–0.7)	1.4 (4.3–0.2)	2.0 (3.7–0.6)	1.2 (5.1–0.0)	2.1 (4.7–0.4)	1.6 (3.7–0.1)
6 pm to 11 pm	0.0 (1.4–0.0)	0.0 (0.0–0.0)	0.0 (0.5–0.0)	0.0 (2.3–0.0)	0.0 (0.0–0.0)	0.0 (1.4–0.0)	0.0 (0.0–0.0)	0.0 (1.5–0.0)
% Local Other Non-Entertainment—Commercials Excluded								
6 am to midnight	2.8 (5.0–1.4)	2.4 (3.7–1.7)	1.9 (3.6–0.7)	1.3 (4.5–0.2)	2.0 (3.5–0.6)	1.2 (4.4–0.0)	1.5 (5.0–0.4)	1.5 (3.6–0.1)
Sign on to sign off	3.1 (4.7–1.7)	2.5 (3.5–1.7)	2.0 (3.7–0.7)	1.3 (4.2–0.2)	2.0 (3.5–0.6)	1.1 (4.2–0.0)	2.1 (4.7–0.4)	1.5 (3.6–0.1)
6 pm to 11 pm	0.0 (1.3–0.0)	0.0 (0.0–0.0)	0.0 (0.5–0.0)	0.0 (1.6–0.0)	0.0 (0.0–0.0)	0.0 (1.3–0.0)	0.0 (0.0–0.0)	0.0 (1.5–0.0)
6 am to midnight								
Sign on to sign off								
6 pm to 11 pm								
6 am to midnight								
Sign on to sign off								
6 pm to 11 pm								
Number of Stations	86	38	173	71	31	57	19	39

SUMMARY: *Medians for "% local news and public affairs" and "% local news, public affairs and other non-entertainment" (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
% Local News and Public Affairs Combined—Commercials Included								
6 am to midnight	11.1 (13.2–8.9)	9.4 (10.9–7.2)	7.3 (9.2–5.9)	6.6 (8.1–4.8)	6.3 (7.9–5.1)	5.3 (7.1–4.0)	9.4 (12.9–6.8)	4.2 (9.0–1.7)
Sign on to sign off	10.8 (12.9–8.5)	9.2 (10.7–7.2)	7.4 (9.7–5.8)	6.4 (8.2–4.6)	6.5 (7.9–4.9)	5.1 (6.8–3.9)	9.8 (12.0–7.9)	4.5 (9.1–1.7)
6 pm to 11 pm	14.0 (18.2–9.3)	9.3 (11.3–4.8)	8.4 (12.5–6.8)	8.4 (12.4–6.7)	7.0 (10.4–1.5)	7.1 (8.7–2.9)	10.8 (18.6–3.1)	2.3 (8.4–0.0)
% Local News and Public Affairs Combined—Commercials Excluded								
6 am to midnight	9.3 (11.0–7.2)	8.3 (9.4–5.8)	5.9 (7.7–4.8)	5.5 (6.6–3.9)	5.2 (6.4–3.7)	4.4 (6.0–3.4)	8.8 (11.2–5.9)	4.1 (8.5–1.5)
Sign on to sign off	8.7 (10.9–7.2)	7.8 (9.4–6.1)	5.9 (7.6–4.6)	5.3 (6.6–3.9)	5.7 (6.3–4.1)	4.4 (5.8–3.2)	8.8 (10.9–6.9)	4.5 (8.6–1.5)
6 pm to 11 pm	11.1 (14.8–7.3)	7.9 (9.8–4.1)	6.8 (9.8–5.2)	6.6 (9.7–5.2)	6.0 (8.9–1.4)	5.6 (7.2–2.3)	8.9 (14.4–2.7)	2.0 (7.4–0.0)
% Local News, Public Affairs and Other Non-Entertainment Combined—Commercials Included								
6 am to midnight	14.4 (17.9–11.7)	12.4 (13.8–9.6)	9.7 (12.3–7.3)	8.3 (12.2–5.8)	8.2 (11.0–6.4)	7.5 (11.1–4.6)	12.8 (15.8–8.3)	6.4 (17.5–3.5)
Sign on to sign off	14.4 (16.4–11.9)	11.6 (14.8–9.6)	9.8 (12.3–7.2)	8.4 (12.3–5.6)	8.3 (10.8–6.5)	7.3 (10.8–4.4)	11.1 (15.4–9.1)	6.2 (17.4–3.7)
6 pm to 11 pm	14.6 (18.5–9.8)	9.6 (11.3–4.8)	8.7 (12.8–6.9)	8.6 (14.8–7.0)	7.0 (11.9–2.3)	7.1 (9.7–2.9)	10.8 (18.6–3.8)	2.9 (14.3–0.0)
% Local News, Public Affairs and Other Non-Entertainment Combined—Commercials Excluded								
6 am to midnight	12.4 (15.3–10.2)	10.7 (12.6–8.3)	8.3 (10.7–6.2)	7.0 (10.5–4.7)	7.1 (9.6–5.1)	6.2 (9.2–3.8)	10.9 (14.7–7.4)	5.8 (16.7–3.4)
Sign on to sign off	12.2 (14.2–10.2)	10.3 (12.8–8.4)	8.4 (10.6–6.0)	7.1 (10.8–4.8)	7.0 (9.6–5.4)	6.2 (9.1–3.6)	10.2 (14.5–8.1)	5.7 (16.0–3.6)
6 pm to 11 pm	11.8 (14.9–7.7)	8.0 (9.8–4.1)	7.0 (10.2–5.4)	7.1 (12.3–5.3)	6.0 (10.0–1.9)	5.9 (8.2–2.5)	8.9 (15.1–3.4)	2.8 (12.7–0.0)
Number of stations	86	38	173	71	31	57	19	39

SUMMARY: *Medians for number of minutes broadcast during week, in each time period (20th–80th) percentile range, which includes 60% of the stations*

Time period	VHF affiliate—top 50		VHF affiliate—below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
6 am to midnight	7439 (7521–7320)	7319 (7398–7206)	7288 (7440–7125)	7121 (7287–6792)	7161 (7299–6872)	6917 (7180–6242)	7080 (7303–6711)	5654 (6133–3553)
Sign on to sign on	8274 (8571–8006)	7846 (8158–7744)	7640 (7957–7425)	7350 (7656–7101)	7593 (7930–7212)	7427 (7657–6659)	7689 (8098–7058)	5902 (6605–3712)
6 pm to 11 pm	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2100)	2100 (2100–2099)
Midnight to 6 am	860 (1126–628)	597 (801–428)	428 (626–197)	311 (466–122)	435 (612–280)	400 (641–277)	536 (1230–327)	177 (531–14)
Number of stations	86	38	173	71	31	57	19	39

% local including entertainment

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Commercials included							
6 AM to midnight:								
10	23.2	20.2	16.9	21.4	17.1	29.4	32.6	43.7
20	20.0	16.7	13.8	13.7	13.5	18.1	26.5	24.5
30	18.5	15.6	12.3	10.5	11.7	10.0	19.7	20.1
40	17.5	14.2	11.5	9.9	10.8	8.9	19.1	14.6
Median	16.1	13.0	10.9	9.2	9.1	8.2	18.5	12.0
60	15.0	12.6	10.1	8.3	8.0	6.8	17.0	9.2
70	14.5	11.9	9.3	7.1	7.8	5.9	16.0	5.7
80	14.2	10.7	8.2	6.2	7.4	4.6	13.2	4.8
90	13.0	9.9	6.3	4.2	5.8	3.5	9.5	4.3
6 PM to 11 PM:								
10	27.0	20.8	20.1	22.6	17.0	28.8	30.3	36.3
20	21.4	14.3	14.9	18.0	12.7	19.8	22.8	20.5
30	19.7	11.3	11.3	13.3	9.9	12.0	20.0	15.6
40	18.1	10.8	10.3	9.8	9.3	9.3	19.9	11.6
Median	17.1	9.9	9.5	8.6	8.5	8.6	18.3	9.9
60	16.4	8.7	8.6	8.3	7.2	7.3	14.0	4.3
70	13.6	8.3	8.2	8.0	7.0	6.5	5.2	3.2
80	11.4	7.0	7.1	7.1	3.9	4.1	3.8	1.5
90	9.9	2.9	5.7	5.8	1.4	1.4	1.9	1.3
Sign on to sign off:								
10	23.0	21.2	16.3	20.0	16.9	28.1	30.5	44.2
20	20.4	16.9	13.3	13.9	13.2	18.7	25.9	24.3
30	18.4	15.8	12.2	10.3	11.5	9.8	19.6	19.9
40	16.9	13.4	11.4	9.6	10.5	8.6	18.8	14.7
Median	15.4	12.7	10.8	9.1	9.4	7.8	17.6	13.8
60	14.7	12.4	10.1	8.3	8.3	6.7	17.5	9.2
70	14.4	11.7	9.2	7.0	7.9	5.7	15.3	5.5
80	13.4	11.1	8.2	6.4	7.4	4.4	13.8	4.8
90	12.3	9.9	6.5	4.2	6.0	3.2	10.3	4.4
	Commercials excluded							
6 AM to midnight:								
10	19.2	18.4	14.6	18.3	14.6	25.7	27.6	32.0
20	17.8	14.4	11.4	11.8	11.3	16.7	21.4	20.8
30	16.4	14.0	10.5	8.8	10.1	8.8	17.5	15.4
40	14.8	12.6	9.8	8.3	8.9	7.7	16.8	12.1
Median	13.5	11.6	9.2	7.6	8.0	7.3	15.8	9.8
60	12.8	10.7	8.6	6.8	6.9	5.8	15.5	7.3
70	12.4	10.2	7.9	5.8	6.6	4.9	14.3	5.3
80	11.9	8.9	6.6	5.1	5.9	3.8	11.4	4.4
90	10.4	8.3	5.4	3.7	4.6	3.3	8.4	4.1
6 PM to 11 PM:								
10	22.1	16.3	16.2	19.6	14.5	24.5	26.3	30.9
20	17.7	11.3	11.1	15.4	9.6	15.7	20.5	17.5
30	15.6	9.4	9.2	10.8	8.2	10.6	17.5	12.6
40	14.6	8.8	8.3	7.9	7.3	7.7	15.2	9.3
Median	14.1	8.2	7.6	7.0	6.6	6.9	14.5	5.7
60	13.0	7.6	7.0	6.5	6.0	5.6	11.6	3.7
70	10.9	7.0	6.5	5.6	5.6	5.3	4.4	2.8
80	9.2	5.8	5.7	5.4	3.4	3.3	3.4	1.4
90	8.0	2.3	4.4	3.8	1.3	1.4	1.7	1.1
Sign on to sign off:								
10	19.6	19.5	14.4	16.9	14.6	24.8	25.9	31.3
20	17.8	15.0	11.5	11.5	11.3	16.5	21.8	19.8
30	16.4	13.8	10.4	8.5	9.8	8.6	17.8	15.6
40	14.6	12.2	9.8	8.2	8.8	7.5	16.5	12.9
Median	13.1	11.2	9.1	7.6	8.0	6.9	15.7	9.8
60	12.6	11.0	8.5	6.7	7.3	5.7	15.5	7.7
70	12.1	10.2	7.8	5.6	6.4	4.9	13.6	5.1
80	11.5	9.0	6.6	5.2	6.1	3.6	11.7	4.5
90	10.6	8.6	5.3	3.6	4.5	3.0	9.2	4.2

Total minutes broadcast

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
6 AM to midnight:								
10	7,555	7,499	7,484	7,383	7,417	7,401	7,421	6,558
20	7,521	7,398	7,440	7,287	7,299	7,180	7,308	6,133
30	7,476	7,383	7,383	7,215	7,260	7,122	7,177	6,067
40	7,455	7,338	7,335	7,170	7,215	7,023	7,129	5,810
Median	7,439	7,319	7,288	7,121	7,161	6,917	7,080	5,654
60	7,399	7,292	7,206	7,047	7,093	6,777	7,059	4,902
70	7,360	7,261	7,158	6,957	7,016	6,578	6,983	4,221
80	7,320	7,206	7,125	6,792	6,872	6,242	6,711	3,553
90	7,263	7,183	7,001	6,579	6,623	6,035	5,992	2,944
6 PM to 11 PM:								
10	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
20	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
30	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
40	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
Median	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
60	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
70	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100
80	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,099
90	2,100	2,100	2,100	2,100	2,100	2,100	2,100	1,881
Sign on to sign off:								
10	8,896	8,242	8,102	7,920	8,085	7,852	8,931	6,933
20	8,571	8,158	7,957	7,656	7,930	7,657	8,098	6,605
30	8,492	8,049	7,854	7,538	7,851	7,585	7,959	6,347
40	8,394	7,938	7,763	7,428	7,684	7,495	7,876	6,184
Median	8,274	7,846	7,640	7,350	7,593	7,427	7,689	5,902
60	8,178	7,799	7,581	7,312	7,428	7,163	7,640	4,956
70	8,085	7,780	7,489	7,248	7,286	6,883	7,462	4,466
80	8,006	7,744	7,425	7,101	7,212	6,659	7,058	3,712
90	7,832	7,594	7,256	6,810	6,917	6,424	6,132	2,990
Midnight to 6 AM:								
10	1,415	877	718	645	768	667	1,539	684
20	1,126	801	626	466	612	641	1,230	531
30	1,009	729	537	405	494	480	812	349
40	935	669	477	354	461	425	638	279
Median	860	597	428	311	435	400	536	177
60	775	536	354	239	424	358	512	92
70	689	478	268	169	348	339	455	43
80	628	428	197	122	280	277	327	14
90	546	331	117	56	212	128	258	0

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% News—6 AM to Midnight

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news programs:								
10	16.6	14.8	14.2	14.1	13.7	12.9	7.8	12.7
20	15.7	13.9	13.3	12.8	12.3	11.1	7.2	8.2
30	14.8	13.1	12.6	12.2	11.9	10.5	6.5	5.5
40	14.3	12.0	12.1	11.9	10.6	9.5	6.0	3.1
Median	13.8	11.3	11.5	11.3	9.8	8.8	5.4	2.3
60	13.2	10.4	10.8	10.6	7.8	8.0	5.2	1.9
70	12.1	8.8	10.1	9.4	7.6	7.4	5.0	1.3
80	11.4	8.1	9.0	8.0	6.9	6.4	4.9	0.8
90	10.5	7.3	7.5	6.8	6.0	5.4	4.2	0.0
Local news only:								
10	11.0	8.6	8.1	7.4	7.4	5.8	7.8	11.9
20	9.9	7.9	7.3	6.6	6.1	5.4	7.2	6.2
30	9.5	7.3	6.8	6.1	5.5	4.9	6.5	3.7
40	9.2	7.1	6.3	5.7	5.1	4.4	6.0	2.3
Median	8.5	6.7	5.9	5.2	5.1	4.2	5.4	2.1
60	7.8	6.1	5.4	4.8	4.9	3.9	5.2	1.8
70	7.5	5.6	5.0	4.5	4.6	3.3	5.0	1.3
80	7.1	5.5	4.6	4.3	4.2	2.7	4.9	0.5
90	6.3	4.8	4.3	3.1	3.6	2.1	3.9	0.0
	Excluding commercials							
Total news programs:								
10	13.5	12.3	11.9	11.2	11.1	10.8	6.3	11.3
20	13.0	11.8	11.0	10.6	10.5	9.3	5.9	7.2
30	12.3	10.6	10.6	10.3	9.8	8.5	5.4	4.9
40	11.6	10.0	10.2	10.0	8.5	8.0	5.1	2.9
Median	11.2	9.5	9.7	9.4	7.8	7.1	4.8	2.0
60	10.8	8.5	9.2	8.7	6.9	6.5	4.7	1.8
70	9.9	7.4	8.5	8.1	5.9	5.9	4.3	1.3
80	9.3	6.9	7.4	6.3	5.2	5.0	4.0	0.8
90	8.2	5.8	5.8	5.5	4.8	4.5	3.8	0.0
Local news only:								
10	8.5	7.2	6.7	5.6	5.7	4.7	6.3	10.5
20	8.1	6.7	5.8	5.2	5.0	4.3	5.9	5.9
30	7.7	6.2	5.3	4.8	4.5	3.9	5.4	3.4
40	7.4	5.9	5.0	4.6	4.3	3.6	5.1	2.1
Median	6.8	5.7	4.7	4.3	4.0	3.4	4.8	1.9
60	6.3	5.0	4.2	3.9	3.7	3.2	4.7	1.7
70	5.9	4.7	4.0	3.5	3.6	2.7	4.3	1.2
80	5.5	4.2	3.7	3.3	3.3	2.3	4.0	0.4
90	4.9	4.0	3.3	2.8	2.8	1.9	3.3	0.0

% News—6 PM to 11 PM

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including Commercials							
Total news programs:								
10	25.7	21.4	19.0	20.2	16.7	17.1	18.0	14.1
20	24.8	18.0	17.1	16.8	15.8	15.7	14.7	8.5
30	23.5	16.4	16.5	16.2	15.7	15.1	11.0	4.2
40	22.0	15.8	16.1	15.5	14.9	14.4	9.8	1.4
Median	18.9	15.3	15.7	14.6	13.8	14.1	9.5	0.4
60	17.3	14.6	14.9	14.3	13.3	13.8	6.1	0.0
70	16.5	13.8	14.3	13.6	11.1	11.3	4.7	0.0
80	15.6	10.0	13.6	13.0	7.8	9.7	2.3	0.0
90	14.5	7.0	11.2	10.0	7.0	7.9	0.5	0.0
Local news only:								
10	17.8	14.3	14.3	13.9	12.1	8.5	18.0	12.1
20	16.5	9.9	10.7	9.8	9.0	7.4	14.7	5.7
30	15.8	9.0	8.6	8.5	8.1	7.1	11.0	3.4
40	14.2	8.3	8.1	7.4	7.0	7.1	9.8	1.1
Median	11.3	7.1	7.5	7.1	6.8	6.8	9.5	0.2
60	9.8	6.9	7.1	7.0	6.4	6.5	6.1	0.0
70	9.1	6.8	6.8	6.8	5.6	5.4	4.7	0.0
80	8.2	3.1	6.3	6.5	0.8	2.8	2.3	0.0
90	7.1	0.0	4.5	5.6	0.0	0.2	0.4	0.0
	Excluding commercials							
Total news programs:								
10	20.4	17.3	15.7	16.3	14.0	13.8	13.8	12.5
20	19.6	14.1	13.6	13.6	12.9	12.4	12.6	7.3
30	18.6	13.4	13.3	12.9	12.1	12.1	8.8	3.5
40	17.0	13.2	12.7	12.5	11.1	11.6	7.7	1.3
Median	15.0	12.2	12.4	11.7	10.9	11.2	7.4	0.4
60	14.0	11.7	11.9	11.1	10.4	11.0	4.8	0.0
70	12.8	11.2	11.1	10.5	8.5	9.3	3.8	0.0
80	12.2	8.0	10.6	9.8	6.1	8.0	1.8	0.0
90	11.4	5.5	9.2	8.1	5.4	5.9	0.4	0.0
Local news only:								
10	13.7	11.2	11.0	11.2	9.0	6.8	13.8	10.9
20	13.0	7.9	8.0	7.9	7.4	5.9	12.6	4.7
30	12.2	7.6	6.8	6.6	6.4	5.6	8.8	3.1
40	10.9	6.5	6.4	6.2	5.7	5.4	7.7	1.1
Median	9.0	6.0	5.8	5.7	5.1	5.2	7.4	0.2
60	7.7	5.7	5.5	5.5	4.7	5.0	4.8	0.0
70	7.2	5.1	5.2	5.2	4.0	4.4	3.8	0.0
80	6.4	2.5	4.7	5.1	0.6	2.2	1.8	0.0
90	5.4	0.0	3.5	4.2	0.0	0.2	0.3	0.0

% News—sign on to sign off

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news programs:								
10	15.3	14.3	13.7	13.3	13.1	12.2	7.1	12.5
20	14.6	13.1	13.0	12.7	12.1	10.4	7.0	8.2
30	14.0	12.5	12.3	12.0	11.7	9.9	6.9	5.6
40	13.1	11.1	11.7	11.5	10.3	9.2	6.5	3.3
Median	12.7	10.7	11.2	10.8	9.5	8.4	6.3	2.3
60	12.1	10.0	10.6	10.3	7.9	7.8	6.2	2.0
70	11.5	9.0	9.9	9.2	7.5	7.1	5.3	1.6
80	10.7	8.0	8.9	8.1	6.7	6.3	4.9	0.9
90	10.0	7.5	7.4	6.8	6.2	5.4	4.5	0.0
Local news only:								
10	10.4	8.6	8.1	7.4	7.2	5.7	7.1	12.3
20	9.7	7.8	7.2	6.7	6.3	5.2	7.0	6.2
30	9.1	7.3	6.8	6.1	5.4	4.8	6.9	3.6
40	8.6	7.2	6.2	5.4	5.2	4.3	6.5	2.9
Median	8.0	6.7	5.8	5.1	5.1	4.0	6.2	2.1
60	7.4	6.4	5.3	4.8	5.1	3.8	6.1	1.9
70	7.1	5.8	4.9	4.4	4.5	3.3	5.6	1.5
80	6.8	5.2	4.6	4.1	4.3	2.8	4.9	0.6
90	6.1	5.0	4.2	3.0	3.7	2.0	4.5	0.0
	Excluding commercials							
Total news programs:								
10	12.7	11.8	11.6	11.0	10.7	10.2	6.2	11.4
20	12.2	11.2	10.9	10.6	10.4	8.8	5.8	7.0
30	11.5	10.0	10.3	9.9	9.5	8.2	5.7	5.0
40	10.7	9.5	9.7	9.4	8.2	7.5	5.6	3.0
Median	10.3	9.2	9.3	9.0	7.7	7.0	5.5	2.1
60	10.0	8.5	8.9	8.4	6.8	6.3	5.2	1.9
70	9.4	7.5	8.3	7.5	6.0	5.8	4.9	1.5
80	8.8	7.0	7.2	6.1	5.3	5.1	4.1	0.9
90	8.2	6.3	5.8	5.5	4.9	4.5	3.8	0.0
Local news only:								
10	8.4	7.3	6.6	5.8	5.6	4.5	6.2	11.4
20	7.8	6.7	5.8	5.2	5.1	4.2	5.7	5.9
30	7.4	6.2	5.3	4.8	4.6	3.8	5.7	3.4
40	7.0	6.0	5.0	4.5	4.4	3.6	5.6	2.6
Median	6.4	5.7	4.6	4.2	4.0	3.3	5.5	1.9
60	5.9	5.3	4.2	3.9	3.8	3.1	5.2	1.8
70	5.7	4.8	4.0	3.5	3.7	2.6	4.9	1.3
80	5.3	4.4	3.7	3.1	3.4	2.5	4.0	0.4
90	4.8	3.9	3.2	2.6	2.6	1.7	3.8	0.0

% Public affairs—6 a.m. to midnight

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
Including commercials								
All public affairs programs:								
10	9.0	8.5	6.4	6.2	6.4	6.8	15.0	8.0
20	8.4	6.8	5.6	5.1	5.5	5.7	8.2	4.8
30	7.5	6.0	5.1	4.6	4.9	5.1	6.6	4.0
40	6.9	5.8	4.8	4.4	4.7	4.4	5.9	3.2
Median	6.1	5.3	4.4	4.1	4.3	4.2	5.6	2.8
60	5.4	4.7	3.9	3.6	3.9	3.9	5.5	2.3
70	4.6	4.5	3.4	3.2	3.6	3.7	4.4	2.1
80	3.9	3.7	3.2	2.8	3.3	3.1	3.3	1.0
90	3.2	2.8	2.5	2.2	2.8	2.5	1.8	0.3
Local public affairs programs only:								
10	5.3	5.4	2.9	2.5	2.4	3.2	11.4	5.4
20	4.1	3.3	2.4	1.8	2.1	2.5	5.7	3.3
30	3.4	2.7	2.0	1.5	1.7	2.0	5.5	2.0
40	2.9	2.5	1.6	1.2	1.5	1.7	4.7	1.7
Median	2.6	2.0	1.3	0.8	1.2	1.0	3.7	1.3
60	2.1	1.8	1.1	0.8	0.9	0.5	3.2	1.0
70	1.7	1.6	0.8	0.5	0.7	0.4	2.1	0.6
80	1.2	1.2	0.5	0.4	0.5	0.1	1.7	0.1
90	0.8	0.8	0.3	0.0	0.3	0.0	1.5	0.0
Excluding commercials								
All public affairs programs:								
10	8.2	8.0	5.9	5.6	6.1	5.7	12.9	7.4
20	7.6	6.2	5.1	4.7	5.0	5.1	6.7	4.5
30	6.9	5.7	4.7	4.2	4.6	4.6	6.1	4.0
40	6.4	5.5	4.4	3.9	4.3	4.1	5.2	3.0
Median	5.3	5.0	4.0	3.7	4.0	3.9	5.0	2.5
60	4.9	4.5	3.5	3.3	3.8	3.6	4.9	2.2
70	4.1	4.1	3.2	3.0	3.4	3.2	4.3	1.9
80	3.7	3.4	3.0	2.6	3.0	2.9	3.2	0.9
90	3.1	2.6	2.3	1.9	2.5	2.3	1.7	0.2
Local public affairs programs only:								
10	4.7	5.1	2.6	2.2	2.2	3.0	8.7	5.2
20	3.8	3.3	2.3	1.7	2.0	2.3	5.5	3.1
30	3.1	2.7	1.9	1.4	1.7	1.9	5.1	1.9
40	2.9	2.3	1.5	1.1	1.5	1.5	4.6	1.7
Median	2.3	1.9	1.2	0.8	1.2	0.9	3.7	1.3
60	2.0	1.8	1.1	0.8	0.9	0.5	3.0	0.8
70	1.6	1.6	0.8	0.5	0.7	0.4	2.0	0.6
80	1.2	1.2	0.5	0.4	0.5	0.1	1.6	0.1
90	0.7	0.8	0.3	0.0	0.3	0.0	1.5	0.0

% Public affairs—6 p.m.–11 p.m.

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Commercials included							
All public affairs programs:								
10	12.1	10.9	10.5	10.9	9.8	10.1	6.0	7.3
20	10.5	9.8	9.2	9.7	9.7	8.9	4.7	5.3
30	9.9	8.9	8.6	8.8	8.6	8.6	2.9	3.4
40	8.6	8.6	7.4	7.6	8.5	8.5	2.9	2.8
Median	7.3	8.3	5.7	4.4	7.4	8.4	1.7	1.4
60	5.2	6.8	3.1	3.9	5.4	6.0	1.6	0.5
70	3.2	4.5	2.8	2.8	2.5	4.2	1.0	0.0
80	1.4	2.8	1.4	1.4	1.4	2.5	0.0	0.0
90	0.0	1.6	0.0	0.0	0.3	0.4	0.0	0.0
Local public affairs programs only:								
10	4.0	2.8	2.8	2.5	2.0	2.4	6.0	4.8
20	3.0	2.0	1.4	1.5	1.4	1.4	4.3	2.8
30	1.9	1.5	1.4	1.4	1.4	0.6	2.6	1.5
40	1.6	1.4	1.3	1.0	1.3	0.0	1.5	1.2
Median	1.4	1.4	0.4	0.0	0.5	0.0	1.4	0.0
60	1.3	1.3	0.0	0.0	0.1	0.0	1.0	0.0
70	0.6	0.4	0.0	0.0	0.0	0.0	0.0	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Commercials excluded							
All public affairs programs:								
10	10.8	9.8	9.4	10.0	9.1	9.0	5.8	6.4
20	9.3	8.9	8.4	8.6	8.6	7.9	3.6	5.0
30	8.9	8.0	7.6	8.0	7.9	7.7	2.8	3.4
40	8.0	7.9	6.6	7.0	7.6	7.5	2.5	2.5
Median	6.7	7.2	5.0	4.2	5.8	7.2	1.7	1.4
60	5.0	6.2	3.1	3.7	4.7	5.6	1.6	0.4
70	2.9	4.1	2.5	2.5	2.5	4.0	0.8	0.0
80	1.3	2.6	1.4	1.4	1.4	2.3	0.0	0.0
90	0.0	1.4	0.0	0.0	0.3	0.4	0.0	0.0
Local public affairs programs only:								
10	3.7	2.8	2.7	2.5	2.0	2.2	5.8	4.8
20	2.7	1.8	1.4	1.4	1.4	1.4	3.3	2.6
30	1.8	1.5	1.3	1.3	1.4	0.6	2.2	1.5
40	1.5	1.4	1.2	0.9	1.3	0.0	1.5	1.1
Median	1.4	1.3	0.4	0.0	0.5	0.0	1.4	0.0
60	1.1	1.2	0.0	0.0	0.1	0.0	0.7	0.0
70	0.6	0.4	0.0	0.0	0.0	0.0	0.0	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

% Public affairs—sign on to sign off

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Commercials included							
All public affairs programs:								
10	8.9	8.4	6.1	5.8	6.2	6.4	14.0	7.9
20	7.6	7.0	5.5	4.9	5.3	5.4	7.2	4.9
30	7.0	5.8	5.0	4.5	4.7	4.9	6.4	3.8
40	6.4	5.3	4.7	4.1	4.3	4.3	5.6	3.2
Median	5.8	4.9	4.3	3.9	4.2	4.0	5.3	2.8
60	5.1	4.4	3.7	3.6	3.8	3.8	5.1	2.3
70	4.3	4.2	3.3	3.2	3.6	3.3	4.1	2.1
80	3.7	3.5	3.0	2.8	3.2	2.9	3.2	1.2
90	2.9	2.7	2.5	2.1	2.7	2.5	1.9	0.2
Local public affairs programs only:								
10	4.8	5.3	2.8	2.5	2.3	3.1	10.6	5.3
20	4.0	3.4	2.3	1.7	2.0	2.3	5.1	3.2
30	3.3	2.6	1.9	1.3	1.8	1.9	5.1	2.1
40	2.8	2.3	1.6	1.1	1.6	1.6	4.5	1.8
Median	2.5	2.0	1.3	0.9	1.2	1.0	3.5	1.6
60	2.1	1.7	1.1	0.8	0.8	0.6	3.1	1.0
70	1.7	1.5	0.8	0.5	0.7	0.4	2.1	0.7
80	1.3	1.2	0.6	0.4	0.4	0.1	1.8	0.1
90	0.8	0.8	0.3	0.0	0.2	0.0	1.4	0.0
	Commercials excluded							
All public affairs programs:								
10	8.0	7.7	5.6	5.3	5.9	5.4	11.8	7.4
20	6.7	6.7	5.0	4.5	4.8	4.7	6.3	4.5
30	6.3	5.5	4.7	4.0	4.4	4.4	5.9	3.8
40	6.0	5.2	4.4	3.8	4.0	4.0	5.1	2.9
Median	5.3	4.7	3.9	3.7	3.9	3.6	4.7	2.7
60	4.5	4.2	3.5	3.3	3.6	3.4	4.4	2.2
70	3.8	3.8	3.1	2.9	3.3	3.0	4.0	1.9
80	3.4	3.2	2.8	2.7	2.9	2.7	3.0	1.2
90	2.8	2.5	2.3	1.9	2.4	2.4	1.9	0.2
Local public affairs programs only:								
10	4.4	4.9	2.5	2.3	2.2	2.8	8.1	4.9
20	3.7	3.2	2.1	1.6	1.8	2.1	4.8	3.0
30	3.1	2.5	1.8	1.3	1.8	1.8	4.8	2.1
40	2.7	2.2	1.5	1.1	1.6	1.4	4.4	1.7
Median	2.2	1.8	1.3	0.8	1.2	0.8	3.5	1.5
60	2.0	1.7	1.0	0.7	0.8	0.5	2.9	0.9
70	1.6	1.5	0.8	0.5	0.7	0.3	1.9	0.6
80	1.1	1.2	0.6	0.4	0.4	0.1	1.8	0.1
90	0.8	0.8	0.3	0.0	0.2	0.0	1.4	0.0

% Other non-entertainment—6 a.m. to midnight

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independen	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total other non-entertainment programs:								
10	14.9	14.7	13.9	13.3	15.5	19.8	15.4	32.5
20	13.4	12.9	12.3	11.1	12.9	13.7	13.0	14.8
30	11.6	11.8	11.1	10.8	11.3	11.7	10.8	9.9
40	10.7	10.5	10.5	9.9	9.9	10.5	10.6	7.6
Median	10.1	9.1	9.5	8.8	7.8	9.6	8.3	7.2
60	9.1	8.1	8.5	7.9	6.6	8.6	7.0	6.1
70	8.6	7.4	7.3	7.5	6.5	7.9	5.9	4.3
80	7.9	6.7	6.6	6.0	5.5	6.3	5.1	2.8
90	6.9	5.5	5.9	4.6	4.2	4.1	4.4	1.8
Local other non-entertainment programs only:								
10	6.3	6.0	5.0	6.6	4.8	8.7	6.1	10.2
20	5.5	3.9	3.9	4.6	3.7	5.4	5.1	3.7
30	4.7	3.5	3.2	3.1	3.1	3.1	3.0	2.3
40	4.0	2.9	2.6	2.0	2.7	2.1	2.4	1.9
Median	2.9	2.4	2.1	1.5	2.0	1.3	1.5	1.5
60	2.7	2.2	1.5	0.9	1.6	0.7	0.9	0.9
70	2.3	2.0	1.1	0.4	1.4	0.3	0.8	0.5
80	1.4	1.8	0.8	0.2	0.6	0.0	0.4	0.1
90	0.6	0.7	0.4	0.0	0.0	0.0	0.0	0.0
	Excluding commercials							
Total other non-entertainment programs:								
10	13.7	13.6	13.3	12.4	14.6	17.6	13.5	30.7
20	12.6	11.9	11.2	10.6	12.2	12.1	12.4	14.1
30	10.9	11.0	10.4	9.9	10.6	10.6	10.4	9.7
40	10.1	9.9	9.8	8.9	9.3	9.8	9.9	7.4
Median	9.4	8.5	8.7	7.9	7.2	8.5	8.0	6.0
60	8.3	7.7	7.9	7.2	6.5	7.8	6.1	5.5
70	7.9	7.1	6.8	6.5	6.0	7.4	5.7	4.2
80	7.3	6.0	6.2	5.6	5.3	5.8	4.6	2.7
90	6.3	5.3	5.4	4.3	4.0	3.4	3.7	1.6
Local other non-entertainment programs only:								
10	5.9	5.8	4.6	5.9	4.6	7.1	5.2	9.5
20	5.0	3.7	3.6	4.5	3.5	4.4	5.0	3.6
30	4.5	3.3	2.9	2.7	3.0	2.9	2.6	2.3
40	3.8	2.9	2.4	1.7	2.5	2.1	2.3	1.8
Median	2.8	2.4	1.9	1.3	2.0	1.2	1.5	1.5
60	2.5	2.1	1.4	0.8	1.5	0.7	0.8	0.8
70	2.2	2.0	1.0	0.4	1.4	0.3	0.7	0.5
80	1.4	1.7	0.7	0.2	0.6	0.0	0.4	0.1
90	0.6	0.7	0.4	0.0	0.0	0.0	0.0	0.0

% Other non-entertainment—6 p.m. to 11 p.m.

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
Including commercials								
Total other non-entertainment programs:								
10	6.8	4.3	4.3	4.4	4.2	4.6	5.6	21.4
20	4.1	2.6	2.9	2.9	2.0	2.9	4.7	14.9
30	2.9	1.4	1.5	2.1	1.4	2.1	4.1	5.2
40	1.5	1.0	1.4	1.4	1.4	1.4	2.8	2.8
Median	1.4	0.1	0.7	1.4	0.5	1.3	1.4	1.4
60	0.1	0.0	0.0	0.4	0.2	0.4	1.3	0.1
70	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Local other non-entertainment programs only:								
10	2.7	0.0	1.4	4.4	1.4	2.8	0.6	6.9
20	1.4	0.0	0.5	2.3	0.0	1.4	0.0	1.5
30	0.1	0.0	0.0	1.4	0.0	0.0	0.0	0.1
40	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Median	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
60	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
70	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Excluding commercials								
Total other non-entertainment programs:								
10	5.8	3.8	3.8	4.0	3.5	4.3	5.4	20.0
20	3.5	2.3	2.5	2.6	1.8	2.8	4.3	14.2
30	2.7	1.1	1.4	1.8	1.4	2.1	4.0	4.5
40	1.4	0.8	1.2	1.3	1.2	1.3	2.6	2.7
Median	1.2	0.0	0.7	1.1	0.5	1.1	1.4	1.0
60	0.0	0.0	0.0	0.4	0.2	0.4	1.3	0.1
70	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Local other non-entertainment programs only:								
10	2.3	0.0	1.3	3.2	1.4	2.7	0.6	6.2
20	1.3	0.0	0.5	1.6	0.0	1.3	0.0	1.5
30	0.0	0.0	0.0	1.2	0.0	0.0	0.0	0.1
40	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Median	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
60	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
70	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
80	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
90	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

% Other non-entertainment—sign on to sign off

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total other non-entertainment programs:								
10	13.2	13.6	13.4	13.6	15.1	19.7	15.6	33.3
20	12.4	12.0	11.8	11.0	11.8	12.8	13.8	14.3
30	11.5	11.3	10.7	10.4	11.0	11.1	10.6	9.6
40	10.4	10.1	10.1	9.2	9.3	9.9	9.7	7.3
Median	9.6	9.3	9.4	8.8	7.3	9.1	9.6	6.9
60	8.8	8.2	8.3	7.8	6.6	8.1	7.0	6.1
70	8.3	7.1	7.0	7.1	6.2	7.3	5.5	4.4
80	7.8	6.8	6.4	5.8	5.3	6.1	4.9	2.8
90	6.8	5.5	5.8	4.5	3.9	4.1	4.2	1.7
Local other non-entertainment programs only:								
10	6.1	6.0	4.8	7.0	4.7	8.3	5.5	9.6
20	5.1	3.8	3.9	4.3	3.7	5.1	4.7	3.7
30	4.5	3.3	3.2	3.0	3.0	3.0	2.7	2.4
40	3.9	2.8	2.5	2.1	2.9	2.2	2.3	1.8
Median	3.4	2.6	2.1	1.4	2.0	1.2	2.1	1.6
60	2.7	2.3	1.6	1.0	1.5	0.7	1.2	1.0
70	2.5	1.9	1.1	0.5	1.4	0.4	0.9	0.6
80	1.7	1.7	0.7	0.2	0.6	0.0	0.4	0.1
90	0.7	0.8	0.4	0.0	0.1	0.0	0.0	0.0
	Excluding commercials							
Total other non-entertainment programs:								
10	12.6	12.7	12.6	13.0	14.1	16.6	14.3	29.8
20	11.5	11.4	10.9	10.4	11.2	11.3	12.8	13.6
30	10.9	10.6	10.2	9.7	10.3	10.1	10.1	9.4
40	9.8	9.5	9.4	8.3	8.9	9.3	9.4	7.2
Median	9.2	8.7	8.7	7.9	7.0	8.3	8.7	6.2
60	8.2	7.8	7.6	7.1	6.3	7.4	6.3	5.4
70	7.7	6.8	6.6	6.6	5.8	6.7	5.0	4.3
80	7.1	6.3	6.0	5.5	5.1	5.5	4.3	2.7
90	6.2	5.3	5.2	4.1	3.6	3.2	3.7	1.6
Local other non-entertainment programs only:								
10	5.8	5.6	4.5	5.8	4.5	7.2	5.0	8.9
20	4.7	3.5	3.7	4.2	3.5	4.2	4.6	3.6
30	4.3	3.3	3.0	2.7	3.0	2.8	2.2	2.3
40	3.7	2.7	2.4	1.9	2.7	2.0	2.2	1.7
Median	3.1	2.5	2.0	1.3	2.0	1.1	2.1	1.5
60	2.6	2.2	1.6	0.9	1.4	0.7	1.1	0.9
70	2.3	1.9	1.0	0.5	1.4	0.4	0.9	0.5
80	1.7	1.7	0.7	0.2	0.6	0.0	0.4	0.1
90	0.7	0.8	0.4	0.0	0.1	0.0	0.0	0.0

% News and public affairs—6 a.m. to midnight

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news and public affairs programs:								
10	23.5	21.2	19.4	18.1	18.5	18.2	22.6	20.2
20	22.9	19.8	18.4	17.1	17.3	16.6	13.8	15.0
30	20.9	18.6	17.3	16.5	16.4	14.9	13.3	9.2
40	20.2	18.0	16.5	16.2	15.8	13.7	12.3	7.9
Median	19.8	17.1	15.7	15.4	13.9	13.0	11.4	6.4
60	19.3	15.9	15.3	14.8	12.8	12.6	10.3	5.2
70	18.4	14.7	14.5	13.7	11.8	11.6	9.4	4.2
80	16.8	13.9	13.3	12.5	11.0	10.9	8.6	3.0
90	15.6	11.3	11.5	10.0	9.8	9.4	6.5	1.4
Local news and public affairs programs only:								
10	15.2	11.8	10.3	8.7	8.5	7.9	20.6	17.8
20	13.2	10.9	9.2	8.1	7.9	7.1	12.9	9.0
30	12.8	10.3	8.6	7.5	7.4	6.4	12.2	7.1
40	12.0	9.6	8.0	7.0	6.6	5.8	10.7	5.7
Median	11.1	9.4	7.3	6.6	6.3	5.3	9.4	4.2
60	10.5	8.7	6.8	6.0	6.0	4.7	8.3	3.1
70	9.5	7.9	6.3	5.4	5.4	4.5	7.3	2.5
80	8.9	7.2	5.9	4.8	5.1	4.0	6.8	1.7
90	8.0	6.2	5.2	4.3	4.0	3.3	6.4	0.2
	Excluding commercials							
Total news and public affairs programs:								
10	20.0	18.7	16.7	15.3	16.1	15.2	20.3	19.4
20	19.0	17.3	15.7	14.5	15.0	14.0	12.4	13.7
30	17.8	16.0	14.9	14.1	14.3	12.9	11.2	8.7
40	16.9	15.4	14.2	13.8	13.6	11.8	10.6	7.3
Median	16.7	14.8	13.6	13.2	11.1	11.2	9.9	6.1
60	16.3	13.8	13.3	12.4	10.4	10.5	9.3	4.7
70	15.2	12.8	12.3	11.5	10.1	9.9	8.8	4.0
80	14.3	12.0	11.3	9.8	9.2	9.0	7.9	2.8
90	13.3	9.7	9.3	8.3	8.2	8.0	5.7	1.2
Local news and public affairs programs only:								
10	12.8	10.8	8.6	7.3	7.1	7.1	16.1	16.8
20	11.0	9.4	7.7	6.6	6.4	6.0	11.2	8.5
30	10.6	8.7	7.2	6.1	5.9	5.4	10.3	6.7
40	10.0	8.6	6.6	5.8	5.7	4.8	10.1	5.2
Median	9.3	8.3	5.9	5.5	5.2	4.4	8.8	4.1
60	8.7	7.4	5.5	4.8	5.0	4.0	6.8	2.8
70	7.9	6.5	5.2	4.5	4.6	3.7	6.6	2.4
80	7.2	5.8	4.8	3.9	3.7	3.4	5.9	1.5
90	6.7	5.2	4.0	3.3	3.2	2.9	5.5	0.2

% News and public affairs—6 p.m. to 11 p.m.

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news and public affairs programs:								
10	35.1	26.8	27.6	28.8	25.2	24.4	22.4	16.4
20	33.4	23.3	25.4	26.2	23.1	23.7	18.7	12.6
30	29.7	24.8	24.1	23.1	22.2	22.8	15.5	7.7
40	27.8	23.9	22.9	22.8	20.2	22.0	14.0	7.0
Median	26.1	22.2	20.2	20.5	18.1	19.0	10.8	4.4
60	24.7	20.2	19.0	18.8	17.1	18.3	7.7	2.8
70	23.1	18.1	17.3	17.5	15.7	17.3	5.9	2.1
80	20.1	17.2	16.1	16.6	15.7	15.7	3.3	0.5
90	17.2	15.9	14.3	13.1	13.4	13.9	2.0	0.0
Local news and public affairs programs only:								
10	20.4	15.3	15.3	15.0	14.8	10.2	20.0	15.4
20	18.2	11.3	12.5	12.4	10.4	8.7	18.6	8.4
30	17.2	11.0	10.2	9.4	9.9	8.1	15.5	5.2
40	16.4	9.9	9.5	8.6	8.0	7.1	14.0	3.6
Median	14.0	9.3	8.4	8.4	7.0	7.1	10.8	2.3
60	11.4	8.4	8.0	7.4	6.6	6.6	7.5	1.4
70	10.0	7.1	7.1	7.1	6.1	5.4	4.7	0.3
80	9.3	4.8	6.8	6.7	1.5	2.9	3.1	0.0
90	8.6	1.3	5.4	6.1	0.0	1.4	1.4	0.0
	Excluding commercials							
Total news and public affairs programs:								
10	28.5	22.8	23.1	24.8	21.2	21.2	18.7	13.9
20	27.5	21.6	21.3	22.1	19.2	20.0	14.5	11.8
30	25.1	20.5	20.4	19.5	18.6	19.1	12.9	6.8
40	23.3	20.0	18.6	18.1	16.0	18.4	10.9	6.2
Median	21.8	19.0	16.6	17.0	15.3	15.6	8.9	4.2
60	20.0	17.0	15.4	15.7	14.5	14.9	6.4	2.7
70	18.8	14.9	14.5	14.4	13.6	14.2	4.7	1.8
80	16.1	14.4	13.1	13.7	12.3	13.1	3.0	0.4
90	13.9	13.3	11.7	10.0	10.4	11.9	1.7	0.0
Local news and public affairs programs only:								
10	16.1	12.1	12.0	12.3	10.7	7.9	17.0	13.0
20	14.8	9.8	9.8	9.7	8.9	7.2	14.4	7.4
30	14.1	9.1	8.3	8.1	8.4	6.4	12.9	4.3
40	13.0	8.4	7.6	7.1	6.1	5.8	10.9	3.3
Median	11.1	7.9	6.8	6.6	6.0	5.6	8.9	2.0
60	9.2	7.0	6.2	6.1	5.1	5.2	6.2	1.4
70	7.9	5.8	5.7	5.4	4.2	4.4	3.8	0.3
80	7.3	4.1	5.2	5.2	1.4	2.3	2.7	0.0
90	6.7	1.1	4.2	4.6	0.0	1.4	1.3	0.0

% News, and public affairs—sign on to sign off

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news and public affairs programs:								
10	22.3	20.8	18.8	17.5	17.8	17.3	20.6	23.9
20	20.9	19.0	17.5	16.9	16.3	15.8	13.4	14.6
30	19.6	17.7	16.7	16.4	15.7	14.0	12.8	9.2
40	18.8	17.1	15.9	15.4	15.2	13.0	12.0	7.6
Median	18.4	16.1	15.4	14.8	13.7	12.3	11.5	6.6
60	17.9	15.0	15.0	14.2	12.7	12.1	10.8	5.4
70	17.1	14.5	14.2	13.3	11.8	11.5	9.9	4.5
80	16.3	13.7	13.1	12.4	10.7	10.6	9.1	4.0
90	15.0	11.1	11.4	9.6	9.7	9.3	7.1	1.3
Local news and public affairs programs only:								
10	14.6	13.2	10.1	8.7	8.4	7.8	19.5	19.4
20	12.9	10.7	9.1	8.2	7.9	6.8	12.0	9.1
30	12.3	10.0	8.4	7.3	7.3	6.2	11.5	7.4
40	11.6	9.6	7.8	6.8	6.6	5.6	10.6	5.7
Median	10.8	9.2	7.4	6.4	6.5	5.1	9.8	4.5
60	9.9	8.7	6.8	6.0	6.1	4.8	9.0	3.4
70	9.4	8.2	6.2	5.5	5.8	4.4	8.4	2.7
80	8.5	7.2	5.8	4.6	4.9	3.9	7.9	1.7
90	7.7	6.1	5.0	4.1	4.2	3.1	6.3	0.1
	Excluding commercials							
Total news and public affairs programs:								
10	19.1	18.0	16.0	15.0	15.2	14.7	19.0	20.0
20	17.6	16.9	15.2	14.2	14.5	13.3	12.0	13.4
30	16.4	15.3	14.6	13.8	13.6	12.2	11.3	8.8
40	16.0	14.8	14.0	13.2	13.0	11.1	10.2	7.2
Median	15.5	13.9	13.3	12.8	11.0	10.7	9.7	6.1
60	15.1	13.5	12.8	12.3	10.5	10.1	9.4	4.9
70	14.4	11.9	11.9	11.2	10.1	9.6	9.2	4.3
80	13.8	11.8	11.3	9.9	8.9	9.0	7.9	3.8
90	12.9	10.2	9.4	8.0	7.9	7.8	6.3	1.1
Local news and public affairs programs only:								
10	11.7	11.7	8.6	7.4	7.2	6.6	15.3	17.7
20	10.9	9.4	7.6	6.6	6.3	5.8	10.9	8.6
30	10.3	8.9	7.1	5.9	6.1	5.1	10.2	6.7
40	9.8	8.4	6.5	5.7	5.7	4.7	9.2	5.2
Median	8.7	7.8	5.9	5.3	5.7	4.4	8.8	4.5
60	8.2	7.4	5.5	5.0	5.1	3.9	7.7	3.0
70	7.8	6.7	5.2	4.6	4.6	3.6	7.3	2.7
80	7.2	6.1	4.6	3.9	4.1	3.2	6.9	1.5
90	6.2	5.2	4.0	3.2	3.3	2.9	5.5	0.1

% News, public affairs and other non-entertainment—6 a.m. to midnight

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news, public affairs and other non-entertainment programs:								
10	36.1	32.6	32.1	30.8	29.9	31.3	34.3	36.8
20	34.0	29.1	29.0	28.2	28.0	27.1	25.5	31.4
30	32.4	28.3	27.5	26.5	26.4	25.6	23.8	21.7
40	31.2	26.4	26.0	24.8	25.3	24.2	20.8	18.5
Median	29.9	25.3	25.0	23.8	23.3	23.1	19.7	15.7
60	29.2	24.9	23.9	23.2	21.0	22.3	19.4	13.4
70	28.2	24.1	23.1	21.5	18.8	22.0	17.7	11.7
80	26.2	23.5	21.6	20.4	17.8	20.3	17.1	10.9
90	23.9	21.1	19.0	17.1	15.7	18.1	15.2	8.5
Local news, public affairs and other non-entertainment programs only:								
10	19.0	16.3	14.2	14.4	12.6	14.1	24.6	23.0
20	17.9	13.8	12.3	12.2	11.0	11.1	15.8	17.5
30	16.1	13.3	11.4	10.2	10.3	9.6	14.2	10.7
40	15.2	12.9	10.2	9.1	9.3	8.1	13.1	8.3
Median	14.4	12.4	9.7	8.3	8.2	7.5	12.8	6.4
60	13.7	11.7	9.4	7.7	7.8	6.5	11.6	4.4
70	13.1	10.2	8.4	6.5	7.2	5.7	8.8	4.0
80	11.7	9.6	7.3	5.8	6.4	4.6	8.3	3.5
90	10.4	8.9	6.3	4.5	5.3	3.6	7.3	1.6
	Excluding commercials							
Total news, public affairs and other non-entertainment programs:								
10	31.8	29.2	28.2	26.0	27.1	28.4	27.8	35.0
20	29.8	27.0	26.1	24.8	25.5	23.4	24.3	27.7
30	27.8	25.3	24.8	22.7	23.3	22.5	23.0	20.8
40	27.3	23.6	23.3	21.6	22.3	21.0	19.3	16.9
Median	26.2	22.5	22.4	21.1	20.8	20.0	17.3	14.7
60	25.4	22.0	21.2	20.3	17.7	19.6	16.2	12.1
70	24.1	21.6	20.2	18.8	16.6	18.9	15.7	11.0
80	22.1	21.2	19.2	17.3	15.5	17.7	15.2	9.9
90	20.8	18.8	16.7	15.0	13.6	15.9	13.6	7.5
Local news, public affairs and other non-entertainment programs only:								
10	16.5	13.7	12.3	12.4	11.5	12.5	19.6	21.6
20	15.3	12.6	10.7	10.5	9.6	9.2	14.7	16.7
30	14.0	12.0	9.8	9.1	8.8	8.1	12.8	10.0
40	12.8	11.4	8.8	7.8	8.0	7.3	12.1	8.0
Median	12.4	10.7	8.3	7.0	7.1	6.2	10.9	5.8
60	11.8	10.1	7.9	6.3	6.7	5.4	10.2	4.2
70	11.1	9.1	6.9	5.4	6.0	4.7	7.8	3.8
80	10.2	8.3	6.2	4.7	5.1	3.8	7.4	3.4
90	9.0	7.6	5.2	3.7	4.6	3.2	6.3	1.5

% News, public affairs and other non-entertainment—6 p.m. to 11 p.m.

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
Including commercials								
Total news, public affairs and other non-entertainment programs:								
10	36.3	28.7	30.5	30.2	25.5	26.8	25.5	26.1
20	34.5	27.3	27.3	28.4	24.6	24.9	23.0	22.3
30	33.4	26.7	25.5	26.0	22.9	24.3	18.4	17.6
40	30.6	25.4	24.3	23.6	22.5	23.4	14.6	12.6
Median	28.1	23.1	22.7	22.9	20.1	22.1	12.6	9.3
60	26.6	20.8	20.5	20.9	18.5	20.7	9.5	7.5
70	25.3	18.6	19.0	19.6	17.2	18.9	8.3	4.2
80	22.8	17.4	17.1	17.3	16.6	17.9	7.4	2.8
90	19.7	16.1	15.3	15.6	15.9	15.2	5.1	0.5
Local news, public affairs and other non-entertainment programs only:								
10	21.2	15.4	15.8	17.5	15.3	13.1	20.0	18.5
20	18.5	11.3	12.8	14.8	11.9	9.7	18.6	14.3
30	17.9	11.0	11.2	12.4	9.9	8.6	17.8	7.9
40	16.9	10.1	9.9	10.0	8.0	8.1	14.0	4.3
Median	14.6	9.6	8.7	8.6	7.0	7.1	10.8	2.9
60	12.0	8.5	8.3	8.4	6.8	7.0	7.5	1.5
70	10.9	7.1	7.5	7.4	6.3	5.5	4.7	0.7
80	9.8	4.8	6.9	7.0	2.3	2.9	3.8	0.0
90	8.6	1.3	5.4	6.5	0.8	1.4	1.4	0.0
Excluding commercials								
Total news, public affairs and other non-entertainment programs:								
10	30.6	24.2	25.2	25.7	21.8	23.3	23.3	24.1
20	28.7	22.9	23.1	23.2	20.1	21.4	18.1	21.6
30	27.7	22.5	21.8	22.5	19.1	20.9	14.5	16.0
40	25.9	20.7	20.0	20.3	18.5	19.4	11.8	10.5
Median	23.2	19.9	18.5	19.0	16.8	18.0	10.5	8.4
60	21.4	17.4	17.1	17.7	15.8	17.3	8.6	6.7
70	20.1	15.6	15.4	16.1	14.9	15.9	6.7	4.0
80	18.4	14.6	14.2	14.4	14.2	14.3	6.2	2.3
90	15.8	13.3	12.5	12.4	12.8	12.7	4.9	0.5
Local news, public affairs and other non-entertainment programs only:								
10	16.9	12.5	12.9	15.0	12.0	10.2	17.0	16.6
20	14.9	9.8	10.2	12.3	10.0	8.2	15.1	12.7
30	14.2	9.1	8.9	10.0	8.4	6.9	13.6	6.9
40	13.4	8.6	7.4	8.2	6.1	6.4	10.9	4.2
Median	11.8	8.0	7.0	7.1	6.0	5.9	8.9	2.8
60	9.9	7.2	6.5	6.5	5.4	5.4	6.2	1.5
70	8.9	5.8	5.9	5.6	5.0	4.9	3.8	0.7
80	7.7	4.1	5.4	5.3	1.9	2.5	3.4	0.0
90	6.8	1.1	4.4	4.9	0.8	1.4	1.3	0.0

% News, public affairs and other non-entertainment—sign on to sign off

Percentile	VHF affiliate top 50		VHF affiliate below top 50		UHF affiliate		Independent	
	Over $5 million	Under $5 million	Over $1 million	Under $1 million	Over $1 million	Under $1 million	VHF	UHF
	Including commercials							
Total news, public affairs and other non-entertainment programs:								
10	33.1	31.1	30.9	29.7	28.4	30.5	32.3	36.9
20	31.3	29.2	28.2	27.6	26.9	25.7	26.3	31.8
30	30.1	27.4	26.8	25.5	25.9	24.4	23.0	22.6
40	29.3	25.9	25.7	24.4	24.3	23.2	21.6	18.6
Median	28.8	24.9	24.3	23.8	22.4	22.6	19.8	15.3
60	27.7	23.9	23.5	22.6	20.3	21.0	18.8	13.1
70	26.4	23.2	22.7	21.1	18.6	20.5	17.3	11.8
80	25.1	22.5	21.4	19.6	17.8	19.4	16.2	11.0
90	23.2	20.4	18.7	16.8	15.3	17.5	13.7	8.5
Local news, public affairs and other non-entertainment programs only:								
10	19.2	16.8	13.9	14.2	12.4	13.4	23.0	24.6
20	16.4	14.8	12.3	12.3	10.8	10.8	15.4	17.4
30	15.3	13.2	11.3	10.2	10.3	9.2	14.8	12.0
40	14.9	12.7	10.2	9.0	9.3	7.9	14.1	8.8
Median	14.4	11.6	9.8	8.4	8.3	7.3	11.1	6.2
60	13.4	11.2	9.4	7.7	7.9	6.5	10.8	4.9
70	12.7	10.2	8.2	6.4	7.2	5.5	9.4	4.3
80	11.9	9.6	7.2	5.6	6.5	4.4	9.1	3.7
90	10.4	9.0	6.4	4.4	5.4	3.3	7.7	1.6
	Excluding commercials							
Total news, public affairs and other non-entertainment programs:								
10	29.1	28.2	27.1	26.5	25.4	28.2	26.4	35.0
20	27.5	26.6	24.9	24.2	24.9	22.4	24.5	28.4
30	26.6	24.8	23.8	22.2	22.3	21.4	22.0	21.7
40	26.0	23.0	22.6	21.4	21.5	20.7	19.7	17.3
Median	25.1	22.1	21.7	20.8	19.6	19.1	17.3	14.3
60	24.6	21.5	21.0	20.1	17.6	18.3	16.4	12.2
70	22.6	21.1	20.0	18.1	16.4	17.8	15.1	10.6
80	21.7	20.3	18.6	16.5	15.2	17.1	14.2	10.0
90	20.6	18.3	16.6	15.0	13.5	15.4	12.2	7.6
Local news, public affairs and other non-entertainment programs only:								
10	16.5	15.3	12.2	12.6	11.2	12.2	18.4	21.1
20	14.2	12.8	10.6	10.8	9.6	9.1	14.5	16.0
30	13.2	12.1	9.8	8.8	9.0	7.7	13.2	11.4
40	12.8	11.1	8.8	7.7	7.8	7.1	12.7	8.2
Median	12.2	10.3	8.4	7.1	7.0	6.2	10.2	5.7
60	11.3	9.7	8.0	6.2	6.7	5.4	9.4	4.6
70	11.1	9.2	6.8	5.4	6.3	4.7	8.6	4.2
80	10.2	8.4	6.0	4.8	5.4	3.6	8.1	3.6
90	8.7	7.8	5.2	3.7	4.7	3.0	6.4	1.5

F.C.C. 73-1237

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART O, SUBPART A OF THE COMMISSION'S RULES AND REGULATIONS CONCERNING ORGANIZATION OF THE CABLE TELEVISION BUREAU

ORDER

(Adopted November 28, 1973; Released November 30, 1973)

BY THE COMMISSION:

1. On June 13, 1973, the Commission adopted a formal organization for Cable Television Bureau without, however, describing functions for the approved divisions. It was intended that detailed divisional functional statements would be developed after the bureau has had some experience functioning under the new organization.

2. This Order is issued to set forth the functions for the four divisions.

3. Because this amendment relates to internal Commission organization and practice, the prior notice provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C., 553, do not apply, and the amendment can be made effective immediately.

4. Authority for the amendment adopted herein is contained in Sections 4(f) and (i) and 5(b) of the Communications Act of 1934, as amended.

Accordingly, IT IS ORDERED, that effective December 12, 1973, Part O of the Commission's Rules and Regulations is amended as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

In Chapter I of Title 47 of the Code of Federal Regulations, Part O is amended as follows:

1. Section 0.85 is redesignated 0.84 and revised to read as follows:

Sec. 0.84 Functions of the Bureau

The Cable Television Bureau develops, recommends, and administers policies and programs with respect to the regulation of cable television systems and related private microwave radio facilities. The bureau implements the Commission's cable television regulatory program, and performs the work and activities involved in the licensing and regulation of cable television relay stations, in coordination with the Broadcast Bureau.

104-018—74——7

2. Section 0.86 is redesignated 0.85.

Sec. 0.85 Units in the Bureau

The Cable Television Bureau is divided into the following units:

(a) Office of the Bureau Chief;
(b) Certificates of Compliance Division;
(c) Special Relief and Microwave Division;
(d) Policy Review and Development Division;
(e) Research Division.

3. Sections 0.86–0.90 are added, to read as follows:

§ 0.86 *Office of the Chief of the Bureau*

The immediate office of the Bureau Chief is responsible for planning, developing, directing and executing all the functions of the bureau.

§ 0.87 *Certificate of Compliance Division*

The Certificate and Compliance Division is responsible for the following:

(a) Plan, develop, and direct the activities of the Division.

(b) Process applications for certificates of compliance.

(c) Represent the Bureau in adjudicatory hearings pertaining to certificate of compliance matters.

(d) Coordinate with the Special Relief and Microwave Division on procedural changes in the Records and Systems Management Branch to improve initial processing of applications for Certificate of Compliance.

(e) Coordinate with the Special Relief and Microwave Division on the processing of petitions for special relief related to application for Certificates of Compliance.

§ 0.88 *Special Relief and Microwave Division*

The Special Relief and Microwave Division is responsible for the following:

(a) Plan, develop and direct the activities of the Division.

(b) Process special relief petitions, requests for interpretive rulings, applications in the Cable Television Relay Services, and show cause petitions; and coordinate with the Common Carrier Bureau on Section 214 applications, and with the Certificate of Compliance Division on related special relief petitions.

(c) Represent the Bureau in adjudicatory hearings pertaining to non-Certificate of Compliance matters.

(d) Develop and implement systems for controlling all incoming applications and petitions, maintaining program data and records, and provide a reference service to the public.

(e) Coordinate with the Research Division on the engineering aspects of Cable Television Relay Services applications.

§ 0.89 *Policy Review and Development Division*

The Policy Review and Development Division is responsible for the following:

(a) Plan, develop and direct the activities of the Division.

(b) Formulate and recommend to the Bureau new or revised policies and regulations concerning cable television.

(c) Process petitions for rule makings; prepare rule making proposals; analyze and summarize responses to proposals and prepare recommended reports and orders.

(d) Review legislation affecting cable television industry and the cable regulatory program and prepare appropriate recommendations thereon.

(e) Staff special advisory committees.

(f) Participate in Congressional hearings, meetings and conferences with representatives of Federal agencies and state and local governments, and industry organizations and public groups concerned with problems relating to cable television systems.

(g) Participate in other projects involving broad policy review and development.

§ 0.90 *Research Division*

The Research Division is responsible for the following:

(a) Plan, develop and direct the activities of the division.

(b) Compile and analyze information from Commission reporting forms to develop comprehensive and current data pertaining to the cable television industry for use in planning and policy formulation.

(c) Revise existing or develop new reporting forms to obtain data and information required in the regulation of cable television.

(d) Conduct continuous studies to analyze trends and relationships in the cable television industry.

(e) Design and implement selective studies to measure and assess effectiveness of regulatory program, economic and sociopolitical impact, and other technical problems.

(f) Assist the Policy Review and Development Division in determining potential impact of policy proposals.

(g) Keep abreast of current and future technical developments and engineering aspects of cable television matters and advises the Bureau and the Commission on these matters.

(h) Develop and recommend technical standards for the cable television industry.

(i) Analyze engineering aspects of Cable Television Relay Service applications and advise the Special Relief and Microwave Division accordingly.

(j) Confer with government and industry groups interested in economic and technical problems relating to cable television systems.

F.C.C. 73-1214

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 76, SUBPART B, OF THE COMMISSION'S RULES CONCERNING PROCEDURES IN THE CABLE TELEVISION SERVICE

ORDER

(Adopted November 21, 1973; Released November 27, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT; COMMISSIONERS WILEY AND HOOKS CONCURRING IN THE RESULT.

1. In recent months, the Commission has received an increasing number of petitions for special relief or requests for special temporary authority in the Cable Television Service that seek either waiver of the certificate of compliance requirement of Section 76.11 of the Rules or expedited processing of a pending application for certificate in order to permit an existing cable television system to commence carriage of new "local" television signals or in-state non-local educational television signals.[1] Permitting cable systems to carry such signals is invariably unopposed, but the volume of other pending applications prevents prompt Commission or staff attention to such requests.

2. Because of the Commission's policy that favors carriage of "local" and educational signals by cable systems,[2] and its general support of newly emerging television stations, we have concluded that it would serve the public interest to modify the present procedures for authorizing cable carriage of the type of television signals described above, at least for existing cable systems. Accordingly, we are amending Section 76.11 of the Rules to permit an existing system to add "local" television signals (as defined in Sections 76.57(a)(1)-(3), 76.59(a)(1)-(3) and (5), 76.61(a)(1)-(3), and 76.63(a) (as it relates to Section 76.61(a)(1)-(3) of the Rules), and the signals of noncommercial educational television stations that are operated by an agency of the state within which the system is located, without filing an application for a certificate of compliance or receiving a certificate.[3] In-

[1] E.g., *Letter to Fletcher, Heald, Rowell, Kenehan and Hildreth* (Full V.U. Television), FCC 73-1020, —— FCC 2d ——.

[2] Paras. 78-87, 95, *Cable Television Report and Order*, 36 FCC 2d 143, 173-176, 180.

[3] "Significantly viewed" television signals are excluded from this special procedure, since it is likely that determining whether a signal is significantly viewed will involve special showings, which may be disputed, made pursuant to Section 76.54 of the Rules. Likewise, signals licensed to other communities in the same major or smaller television market are excluded, unless they qualify for carriage under other provisions of Section 76.59(a), 76.61(a), or 76.63(a) (as it relates to Section 76.61(a)). Here, too, carriage rights may be disputed.

stead, such an existing cable system need only serve the information required by Section 76.13(b)(1) of the Rules on the Commission and the parties named in § 76.13(a)(6) at least 30 days before commencing such carriage. If no objection is filed with the Commission within 30 days after such service is made, carriage may commence without further Commission action.

3. This amendment is designed to relieve unnecessary burdens and expedite Commission proceedings with respect to matters that our experience indicates are not the subject of dispute. Accordingly, we conclude that prior notice of rulemaking and public procedure thereon are unnecessary, pursuant to Section 4 of the Administrative Procedure Act, 5 U.S.C. 553. Similarly, delay in implementing this amendment would be contrary to the public interest.

4. Authority for the rule amendment adopted herein is contained in Sections 2, 4(i) and (j), 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, IT IS ORDERED, That effective December 5, 1973 Part 76 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 76—Cable Television Service

1. In § 76.11, a proviso is added to paragraph (a), as follows:

§ 76.11 *Certificate of compliance required.*

(a) No cable television system shall commence operations or add a television broadcast signal to existing operations unless it receives a certificate of compliance from the Commission: *Provided, however,* That an existing system may add a television signal, pursuant to §§ 76.57(a)(1)–(3), 76.59(a)(1)–(3) and (5), 76.61(a)(1)–(3), or 76.63(a) (as it relates to § 76.61(a)(1)–(3)), or the signal of a noncommercial educational television station that is operated by an agency of the State within which the system is located, pursuant to §§ 76.57(b), 76.59(c), 76.61(d), or 76.63(a) (as it relates to § 76.61(d)), without filing an application or receiving a certifiate of compliance, if the system serves the information required by § 76.13(b)(1) on the Commission and the parties named in § 76.13(a)(6) at least thirty (30) days before commencing such carriage and no objection is filed with the Commission within thirty (30) days after such service is made. See § 1.47 of this chapter.

* * * * * * *

F.C.C. 73-1175

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
CABLEVISION INVESTORS, INC., McGREGOR, TEX.
For Special Temporary Authorization

NOVEMBER 14, 1973.

CRAIG S. McCOY, ESQ.,
Cole, Zylstra & Raywid,
2011 Eye Street,
Washington, D.C. 20006

DEAR MR. McCOY: On October 16, 1973, you filed a "Request for Special Temporary Authorization" on behalf of Cablevision Investors, Inc., operator of a cable television system at McGregor, Texas. Cablevision Investors seeks authority to carry the signal of Television Broadcast Station KNCT, Channel 46 (ETV), Belton, Texas, on its cable television system until action can be taken on its pending application for a Certificate of Compliance (CAC-3139).

In support of its request, the following matters are stressed:

(a) That the cable system is located within a smaller television market (Waco-Temple, Texas, #120), and the predicted Grade B contour of Station KNCT;

(b) That KNCT is a UHF, non-commercial educational television station, which entitles it to carriage pursuant to Section 76.59(a)(2) of the Commission's Rules;

(c) That KNCT requested carriage which prompted Cablevision to file an application for a Certificate of Compliance;

(d) That in view of the many applications now on file, action on this uncontested application is likely to be some months away; and

(e) That such delay in carriage cannot assist Station KNCT in establishing itself in the Waco-Temple market.

In these circumstances, the Commission herewith waives Section 76.11 of the Commission's Rules to allow immediate carriage of Station KNCT by the above-listed cable television system operated by Cablevision Investors, Inc. This authorization will expire fifteen (15) days after final Commission action on its pending application for a Certificate of Compliance.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1221

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Inquiry concerning operations of Channel 20 Inc., Television Station WDCA-TV, Washington, D.C.

NOVEMBER 21, 1973.

MR. MILTON GRANT,
Vice President, Channel 20 Inc.,
Television Station WDCA-TV,
5202 River Road,
Bethesda, Md. 20016

DEAR MR. GRANT: This concerns the Commission's inquiry into the operations of Television Station WDCA-TV, Washington, D.C., with specific regard to the presentation of "monkey races" on the "Channel 20 Club." The Commission has received your responses dated July 9 and September 26, 1973. These responses have been considered concurrently with the results of the field inquiry.

You described in your July 9 response the process by which the "Channel 20 Club" (including the "monkey races") was presented on WDCA-TV. Briefly, you explained that the "monkey races" were originally video taped at the WDCA-TV studios, and that from the original reels of tape, 17 races of broadcast quality were selected for use on the "Channel 20 Club." You explained that these races comprised a "master reel" of taped races which were used to produce the programs that were broadcast on WDCA-TV. The program was presented to the viewing public as described in the following paragraph.

Children became eligible to compete in the contest by sending to WDCA-TV cards or letters with their telephone numbers and names written thereon. The mail received was then placed in a large bowl called the "Space Bubble" from which the cards or letters were drawn by Captain 20. The program opened on Captain 20 (Dick Dyszel) who was seen in the act of placing a telephone call to a child who had entered the "Channel 20 Club" contest. When the call was completed, with the child on the phone, Dyszel gave the child a chance to select either "monkey number one, two, or three," as the winner of an upcoming "monkey race." After the child's selection was made, a video tape machine was started and the director switched the video from Captain 20 to the video tape playback. The audience then saw the "monkey race" and if the monkey the child selected won the race, the child won a prize. After the race the director switched the video back to Captain 20 who announced whether or not the child had won a prize, and if the child won, what the prize would be.[1]

[1] In WDCA-TV's September 26 letter it was stated that the taping sessions were held during the same time periods when the shows would be seen (7:00 to 9:00 a.m. or 3:00 to 6:00 p.m.).

You stated (and the WDCA–TV program logs confirm) that the entire program was pre-recorded from October 5, 1972, until May 8, 1973. You explained that on May 8, WDCA–TV began broadcasting the program live, as a result of an article that appeared in the *Washington Post* on May 4, 1973. The article concerned a young Channel 20 viewer, Adam Ross, whose home was called by Captain 20 during the taping session. At that time Adam was not home, and Captain 20 mentioned this fact on the program that was broadcast. However, Adam was at home when the program was broadcast some days later and became upset when his phone did not ring after Captain 20 dialed his number. Shortly after the *Post* article appeared, you inserted in the programs an aural announcement explaining that the program was pre-recorded. Prior to that time WDCA–TV used only the word "taped" superimposed on the screen at the beginning of the program.

You stated in your response that the prizes awarded to winners of the contest were bicycles or other toys, and that only one bicycle was available as a prize each day. You furnished documents to support your statements.

You stated that beginning on October 5, 1972, WDCA–TV began awarding a "bike-a-day" as a grand prize for winning the "monkey race." This prize was awarded to the first winner each day, with subsequent winners receiving an Ideal toy. From March 29 to April 27, 1973, after all the bicycles had been awarded, checks for $40 were awarded in lieu of bicycles. Beginning April 28, 1973, all winners were awarded a selection of eight Kohner toys which you have estimated at $19 in value. In your September 26 response you stated that children are not required to view the program to win, and that to the best of your knowledge no announcement was made that they were required to do so.

You stated that during the course of the contest WDCA–TV made 827 calls that were broadcast and that you awarded a total of 688 prizes. You estimated 17 per cent of the 827 calls involved were calls where the child called was not available to come to the phone.

You stated regarding mechanical reproduction announcements broadcast on the program:[2]

> The pre-recorded Channel 20 Club calls were identified with the super "Taped" in compliance with Paragraph 73.653 of Federal Communications Commission regulations concerning the identification of mechanical reproductions.
>
> The word "taped" was chosen over such terms as "pre-recorded" and "previously recorded" because of our experience with children in the audience of the Bozo Circus program who understood the fact that the Bozo Show was "taped" on one day and played back on another, whereas they were unsure of the meaning of the other words. This distinction was made in compliance with

[2] Section 73.1208 of the Commission's Rules which is applicable to AM, FM, and TV stations, provides as follows:

> (a) Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be cleared and in terms commonly understood by the public. For television stations, the announcement may be made visually or aurally.
>
> (b) Taped, filmed, or recorded announcements which are of a commercial, promotional or public service nature need not be identified as taped, filmed or recorded.

[Section 73.653, formerly applicable to television stations, has been included in Section 73.1208.]

sub-paragraph "b" of the above mentioned paragraph concerning the fact that such announcements should be made in language that is clear and well understood.

With regard to pre-school aged viewers or nonreaders, in order to enter the contest one must send in a postcard or letter. We feel that a child who is capable of sending in a card to enter the contest will fully understand the meaning of "taped." If a child is a non-reader, the only way he can enter the contest is for a parent or other person to watch the show, get the address and send it in for him. They in turn would understand that the calls were not live and could explain it to the child.

Based on the experience of 3½ years in using the terms, WDCA was under the impression that the "taped" identification was understood and was in no way being misinterpreted.

Following the Washington Post article on May 4, 1973, the station immediately increased the visibility of the announcement in the following manner: (1) the visual super was expanded to "A Video Tape Recording," and (2) an audio tag was added, "This Captain 20 call was recorded last week for presentation at this time." Additionally, whenever a call was not completed, Captain 20 was instructed to call the child back to be sure he understood the situation.

From May 10, 1973 to June 15, 1973 when the Captain 20 calls took their usual summer hiatus, all calls were broadcast live so that it would be impossible for any further misconceptions to take place.

WDCA–TV at no time had the intention to mislead or misinform viewers, either parents or children as to the actual origin or nature of the call segments.

Although you state your belief that the brief superimposition of the word "taped" on the video tape was sufficient to inform the audience that the contest was broadcast on a delayed basis, there appears to be considerable doubt that pre-school children would understand the meaning of the superimposition without the accompanying audio announcement that was given after the article appeared in the *Washington Post*. The fact that children comprising the audience of the Bozo Circus program understood that the program was taped one day and played back the next would not necessarily resolve the question regarding the Captain 20 contests, since the children in the audience of the Bozo program presumably were told that they would see it on the air the next day, and in fact did so after being in attendance at the studio. As for children who have not learned to read, although, as you state, the only way such a child could enter the contest was "for a parent or other person to watch the show, get the address and send it in for him," it is by no means certain that the parents "in turn would understand that the calls were not live" or, particularly that they would explain this to the child. In fact, the parents might watch the contest only long enough to ascertain the address and thus might never see the word "taped."

You furnished continuity representing an announcement which was broadcast promoting the "monkey races" designated as "Promo P–47." You state this announcement was broadcast from October 2, 1972, until March 5, 1973. Included in the announcement was the language: "Five times a day, five days a week Captain 20 will bring you the monkey races, and you know what that means? A chance to win a bike a day and many more great prizes." The announcement is apparently factually correct; however, it is reasonable to conclude that pre-school children may not be so sophisticated as to understand that the phrase "a bike a day" means only *one* bicycle may be won each day by all contestants combined, and that every contestant giving the correct answer may not win a bicycle on any given day.

You broadcast another promotional announcement for the Captain 20 programs listed on your program log as "AM Kids Block" and designated as video tape cartridge number "P–11". The program logs indicate that this announcement was broadcast from March 26 until May 10, 1973. You submitted scripts of the aural portions of the P–11 announcements which mention that "Captain 20 gives away a bicycle every morning," or in another version, "Now Captain 20 will be on hand with bicycles and prizes every morning too."

Although you promoted bicycles as prizes in connection with the "monkey races" through May 10, you acknowledge that the first prize actually given each day from April 30 through May 10 was a package of toys worth approximately $19, rather than a bicycle. Thus, the promotional announcements were clearly misleading as to the period April 30–May 1.[3]

In the Commission's Public Notice released November 7, 1961, entitled "Licensee Responsibility with Respect to the Broadcast of False, Misleading, or Deceptive Advertising," FCC 61–1316, it was stated:

> With respect to advertising material the licensee has the additional responsibility to take all reasonable measures to eliminate any false, misleading or deceptive matter.

In *KOLOB Broadcasting Company, Inc.* (KCCC), 36 FCC 2d 586 (1972), at page 587, the Commission said:

> The Commission requires that licensees that conduct contests adequately supervise and control the contests to assure that they are conducted fairly and are substantially as represented in announcements to the public.

In broadcasting children's contests, the licensee should be particularly careful to eliminate matter which, to a child, may be false, misleading or deceptive. We believe that the broadcast language cited herein indicates that you failed to exercise the necessary degree of care with respect to the Captain 20 contests, and the Commission will expect the exercise of greater care in the future. Meanwhile, the correspondence in this case is being made a part of the record of the licensee.

Chairman Burch concurring in the result; Commissioner H. Rex Lee absent.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

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[3] Additionally, no bicycles *per se* were awarded from March 29 through April 27, 1973. However, checks in the amount of $40 were awarded one winner per day during this period, which staff investigation has revealed to be a greater amount than the retail price of the bicycles being awarded.

F.C.C. 73-1228

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REFERRAL OF "CHASTAIN ET AL. v. A.T. & T." FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	Docket No. 19793

MEMORANDUM OPINION AND ORDER

(Adopted November 23, 1973; Released November 26, 1973)

BY THE COMMISSION: COMMISSIONERS REID, WILEY AND HOOKS DISSENTING.

1. The Commission has for consideration the oral arguments of Chastain, et al. (Chastain or Petitioners) and the American Telephone and Telegraph Company (AT&T, sometimes referred to as the Bell System operating companies, or the company) held before the Commission on September 24, 1973.

2. The history of this proceeding has been adequately summarized in our order setting down oral argument, FCC 73-791, released August 2, 1973. The foundation of Petitioners complaint rests on their assertion that the product which they supplied to customers desiring portable mobile telephone service was unreasonably denied registered service in AT&T's Improved Mobile Telephone Service areas, and that this exclusion occurred at a time when no alternative automatic portable equipment was type accepted by the Commission. In our Order, we designated the following questions for oral argument:

(a) To determine whether or not AT&T failed to furnish communication service to persons wishing to use Attache Phones upon reasonable request therefor in violation of Section 201(a) of the Communications Act of 1934, as amended (47 U.S.C. 201(a)).

(b) To determine whether or not AT&T unjustly or unreasonably discriminated against persons wishing to use Attache Phones in the practices and regulations pursued by the company in violation of Section 202(a) of the Act (47 U.S.C. 202(a)).

(c) To determine whether or not AT&T was in violation of Section 214(a) of the Act (47 U.S.C. 214(a)) for failing to apply to the Commission for certification to discontinue mobile telephone service to persons wishing to use Attache Phones in Improved Mobile Telephone Service (IMTS) areas on a registered basis.

(d) To determine whether of not AT&T is in violation of Section 203(c) of the Act (47 U.S.C. 203(c)) for failure to include within F.C.C. Tariff No. 263 the provision that manual service is not rendered to manual mobile telephone users on a registered basis in IMTS areas.

3. AT&T was requested to submit, prior to oral argument, any studies or surveys regarding the conversion of manual mobile telephone

service areas to automatic, IMTS areas because we wished to determine to what extent, if any, the exclusion of Attache Phones from IMTS areas was based on such studies. We further asked that AT&T provide independent results from each area where such surveys were conducted, and that the company list those areas which converted to IMTS in which no surveys were made prior to conversion.

4. At oral argument, the parties chose to discuss only those questions concerning Sections 201(a) and 202(a) of the Act, requesting at the conclusion of oral argument a limited amount of time in which to submit briefs regarding the designated issues on Sections 214(a) and 203(c) of the Act.

5. Since we have given a full discussion of the facts in our Order of August 2, 1973, we will repeat only those facts essential to an understanding of the case.

6. The Attache Phone is a portable, manually operated mobile telephone contained in an attache case and designed for use in mobile telephone systems such as that provided by the Bell System operating companies. Unlike a vehicular mobile telephone, the portable manual telephone is not installed for use in an automobile or truck. Consequently, its owner is not limited to placing or receiving calls while in a vehicle, but may instead utilize the device from any location where he is able to obtain mobile telephone service.

7. The portable manual telephone user places a call by first manually locating an idle channel, a process which requires selection by listening to see whether an available channel is free. When an idle channel is located, a mobile operator must intervene to connect him to the desired number. Incoming calls must also go through a mobile operator, who signals the unit and connects the call by utilizing an idle channel. The need for operator assistance is a characteristic of portable manual telephones and serves to distinguish them from a unit equipped with automatic, direct dial capability.

8. Automatic dial service is a distinguishing feature of Improved Mobile Telephone Service (IMTS). Under most circumstances, customers equipped with automatic, IMTS mobile telephones have no need for operator assistance. In addition, idle channels over which to place a call are selected automatically without the need for users to first manually monitor all available channels in order to locate one which is not in use. As a result, calls are initiated and received in much the same way as with the modern land-line telephone.

9. Mobile telephone service originated in the mid-1940's on a manual basis. Manual systems and automatic dial, IMTS systems are the two general classifications of this service. Since 1962, AT&T has been gradually converting its mobile telephone service to IMTS, so that by 1971, 43 percent of the mobile telephones registered with the Bell System operating companies were equipped for IMTS service. The following chart demonstrates the growth of AT&T's mobile telephone offering:[1]

[1] The statistics were not supplied in any of the AT&T filings, but were submitted on November 2, 1973.

	1968	1969	1970	1971
Number of portable manual units	26	105	167	158
Number of vehicular manual units	19,858	22,183	21,603	19,868
Number of vehicular IMTS units	9,869	10,913	12,969	15,386
Total	29,753	33,201	34,739	35,412

10. If a customer desires to furnish his own equipment, he may obtain either manual or IMTS units from numerous suppliers located throughout the country. However, by utilizing other equipment than that provided by AT&T, he is not permitted to operate under the company's blanket authorization, and must apply individually to the Commission for a license. To be so licensed, the applicant must demonstrate that he has made appropriate arrangements with a carrier for the service requested (See 47 C.F.R. 21.15(i)). He may achieve this by including within the application a "letter of intent" to provide the service within a specified service area, signed by an authorized official of the carrier.

11. This does not mean that a subscriber can receive service only in the area designated by the letter of intent. When the customer leaves his base station of registry, he may nevertheless qualify for service as a "roamer". Roamers are mobile telephone users who, although registered in one area, are temporarily in range of a "foreign" base station. In rendering service to roamers equipped with IMTS units, a foreign IMTS base station will complete calls manually with the assistance of a mobile operator.

12. In IMTS areas, the Bell System operating companies will provide only IMTS mobile telephones. These units are not manufactured by AT&T or any of its subsidiaries, but by such companies as Motorola and General Electric.

During the Period of Time in Issue[2] *AT&T Was in Violation of Sections 201(a) and 202(a) of the Act*

13. On the record before us,[3] we find that in excluding the Attache Phone from registry in IMTS areas, AT&T acted unreasonably with respect to Petitioners' customers.

14. Section 201(a) of the Act Provides:

> It shall be the duty of every common carrier engaged in interstate or foreign communications by wire or radio to furnish such communication upon reasonable request therefore . . .

[2] The complaint covers the period from 1968 through July 13, 1970.

[3] The record includes, in addition to the transcript of the oral argument and the subsequently filed briefs, the Memorandum-Order of the Honorable Oliver Gasch, Judge, District Court for the District of Columbia; a Petition for Oral Argument and Prompt Action filed by Petitioners on March 23, 1973; a Response filed April 5, 1973 by AT&T; and a Reply to AT&T's Response filed by Petitioners on April 19, 1973. We are also considering certain documents filed with the District Court, including Plaintiff's memorandum in support of its motion for summary judgment; a number of affidavits in support of its position; Defendant's memorandum in opposition to the motion for summary judgment; affidavits in support of its position; and answers to interrogatories of both parties. In addition, we are considering certain data furnished by AT&T in response to a formal request made by the Commission on November 2, 1973.

15. Section 202(a) of the Act provides:

> It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or service for or in connection with like communication service, directly or indirectly, by means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

16. IMTS has been characterized by the parties as an innovation which furthers the public interest, and on this point there can be little doubt.[4] But at the same time, we are faced with a narrower question: Was it reasonable and non-discriminatory under the Act for the Bell System operating companies to totally exclude portable manual telephones from registered service in every IMTS area, without regard to the varying factors which existed in the diverse areas in which Petitioners sought to market their product?

17. When we requested survey and study information from AT&T, we were primarily interested in learning whether or not the company's exclusionary policy had legitimate roots in technical experience gained from the introduction of portable manual devices like the Attache Phone into automatic systems. Instead, we received a document containing certain surveys of customers conducted between 1957 and 1963. The information provided therein does not satisfy the questions raised since it does not contain technical data in justification of the policy complained of.

18. Although the surveys show problems inherent in manual mobile telephone systems, these factors had been brought to light in previous filings.[5] We have no doubt that the steady implementation of IMTS has as its impetus the desire to alleviate these problems, and we further realize that when a portable manual telephone, or a vehicular manual mobile telephone for that matter, is utilized in an IMTS system, disadvantages are apparent. The primary factors cited by AT&T in defense of its policy include the ability to provide a better grade of service, or service to an increased number of users, or both, where IMTS is provided and manual mobile telephones are not registered; the enhanced privacy that results from the use of IMTS in the absence of manual mobile telephones; the more efficient use of scarce spectrum space that is a consequence of this pattern; the danger manual mobile telephones pose in IMTS areas because of their ability to "seize" channels to the detriment of users of dial mobile telephones; and the adverse impact of manual mobile telephones, which lack automatic channel selection, on the use of the mobile telephone network as a two way communication service.[6]

19. Despite the foregoing difficulties, AT&T has admitted that any adverse effect to an IMTS area which might accrue from the use of manual devices, would vary in severity depending on the congestion

[4] *Order*, FCC 73-791, paras. 4-7, Federal Communications Commission 1963 Annual Report at 119; Federal Communications Commission 1964 Annual Report at 117.

[5] The surveys show that many manual mobile telephone customers were unhappy with crowded channels, push-to-talk mechanisms, and delays caused by placing or receiving calls through operators.

[6] AT&T *Response*, para. 17.

in the area in issue.[7] Notwithstanding the differences between these areas, the Bell System operating companies ended the registration of manual mobile telephones in each and every IMTS area without regard to the degree or lack of congestion, and despite the fact that the companies continued to furnish mobile telephone service to roamers.[8] We do not find that the exclusion was improper with respect to vehicular units, nor improper under all circumstances with respect to portable units, for in those IMTS areas of high congestion, the adverse effects of portable manual mobile telephones might have created a serious problem to continued efficiency. The policy became unreasonable only where portable service was denied in IMTS areas of no congestion, especially since roamers operating in the manual mode were rendered mobile telephone service, and also because the number of prospective Attache Phone users appears to have been minimal. We find that AT&T's stated policy that it attempted to make its new installations generally IMTS installations, and that the conversion would have been made in areas where initially channel congestion did not exist, unreasonable and prejudicial to Petitioners' customers.[9] Where congestion was not a problem, the efficiency of IMTS would not have been greatly impaired by the use of portable manual units.

20. It is important to distinguish portable manual mobile telephones from vehicular manual mobile telephones. In the areas designated for conversion to IMTS, the Bell System operating companies gave what they considered to be reasonable notice of the need to convert to automatic equipment. As a result, vehicular manual customers in these areas were obliged to change their equipment to vehicular IMTS units. No doubt they were put to some inconvenience, but, in fact, suitable vehicular equipment was readily available from Bell System operating companies or from independent equipment suppliers.[10] The same cannot be said for users or potential users of portable, non-vehicular mobile telephones. In 1968 only manual portables were available; and not until June 3, 1971 was a portable IMTS mobile telephone type accepted by the Commission. The result of excluding the Attache Phone was to preclude the use of all portable mobile telephones in IMTS areas, regardless of channel congestion or the unavailability of suitable portable units. For this reason, it appears that AT&T's policy was premature. In view of the relatively small demand for portable manual telephones and the existence of non-congested IMTS areas, the companies should have allowed the continued use of the device in the non-congested areas until such time as portable IMTS units were available. At that time, the same conversion policy that applied to vehicular mobile telephones could have been instituted with respect to portables.

21. We have been presented with what amounted to a complete denial of registry on the assumption that inclusion of portable manual telephones would have inconvenienced the IMTS system, and yet we have

[7] AT&T *Response*, para. 17; Dugan affidavit, paras. 16–25, Bottani affidavit, paras. 14–35.
[8] Bottani affidavit, para. 12.
[9] Transcript, p. 33.
[10] The different licensing procedures required for Bell-leased equipment and customer-provided equipment are discussed at *Order*, FCC 73–791, paras. 8–11.

not been presented with satisfactory technical data that this would necessarily have been the case. It appears that AT&T devised no rational standards by which to deal with portable manual telephones and that the effects of its use had not been appropriately tested in diverse IMTS areas. A blanket denial of registry so broad that it failed to consider divergent factors in various IMTS areas, must be held to be an unreasonable policy in those areas without heavy congestion, and, consequently, a violation of Section 201(a).

22. From the same facts, it follows that AT&T also violated Section 202(a) of the Act during the period of time covered by the complaint. By the exclusion of Attache Phones at a time when portable IMTS equipment was unavailable, AT&T subjected Petitioners' customers to an undue and unreasonable prejudice in those IMTS areas where little, if any, impairment would have resulted to the system. To have excluded the device from an entire mobile telephone market without a validly documented technological basis, violated this section of the Act.

23. While we find that Sections 201(a) and 202(a) have been violated, it nevertheless appears fortunately that the impact on the mobile telephone system was not great. In addition to the AT&T statistics provided (paragraph 9, *supra.*), Petitioners have advised the Commission that between 200 and 300 inquiries were made with respect to the purchase of Attache Phones, and that between 50 and 100 devices were actually sold that were eventually returned because of inability to get access to the Bell IMTS system.[11] These facts further support our conclusion that AT&T was in violation of the Act; however, they also reflect the limited impact of the violations insofar as they show that a small proportion of mobile telephone users or potential users was affected.

AT&T Has Violated Section 214(a) of the Act by Failing To Apply for Certification To Discontinue Service

24. Section 214(a) of the Act provides:

> . . . No carrier shall discontinue, reduce, or impair service to a community, or part of a community unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby . . . Provided, however, that nothing in this section shall be construed to require a certificate or other authorization from the Commission for . . . changes in plant, operation or equipment, other than new construction, which will not impair the adequacy or quality of service provided.

AT&T asserts that a carrier must provide service only to the extent that the service requested is part of its public service offering, and the applicant meets the carrier's terms and conditions for service. It assumes that the extent of a service offering is determined by the carrier's filed tariffs, and that, since land mobile telephone service has never been defined in terms of the particular type of equipment by which it is rendered, a change in such equipment does not require approval under Section 214(a).[12]

[11] Transcript, p. 48.
[12] AT&T Supplemental Memorandum of Law, pp. 10, 11.

25. We cannot agree. The service rendered to both vehicular and portable manual mobile telephones represented a part of the Bell System operating companies' public service offering. When registry ceased to become possible for portable manual customers, a service to a part of the Communications community was discontinued without complying with the prescribed certification procedures under Section 214(a). Vehicular manual customers were able to remain subscribers since vehicular IMTS equipment was available, but service to customers with portable manual telephones in IMTS areas terminated. The service offering that had theretofore been rendered to users of portable manual units represented a service offering to a part of the communications community. Before it was effectively cancelled, AT&T was obliged to seek certification, but failed to do so. Even though the number of customers may have been small, the language of Section 214(a) is clear, and the failure to comply with its requirements places the company in violation of the Act.[13]

26. AT&T would have us find that the exclusion of portable manual units from registry in IMTS areas amounted to a change in equipment requirements, that such a transition was made pursuant to applicable exchange tariffs which require suitable customer-provided equipment for the rendition of service, and that since land mobile telephone service has never been defined in terms of the particular type of equipment by which it is rendered, a change in such equipment does not require approval under Section 214(a) of the Act.[14] It is clear that the policy instituted did change the nature of acceptable equipment to be utilized in IMTS areas, however AT&T misses the mark by stating that it is an equipment change which is in issue with respect to Section 214(a). The conversion from manual to automatic dial equipment in IMTS areas is but a result of a major policy decision; i.e., the total exclusion from registry, and therefore service in IMTS areas, of what had been a class of mobile telephone service. Consequently, the AT&T violation of Section 214(a) was the outgrowth of a clearly definable discontinuance of service and not of the conversion to a new form of equipment which was merely a by-product of the general policy.

27. AT&T cites the 1963 Annual Report of the Commission where we stated in effect that IMTS was an improvement over manual service rather than a new service replacing manual offerings.[15] As we have already indicated, no question exists as to the benefits brought to mobile telephone service by IMTS. Making such a finding, however, does not mean that any sanction was ever intended for the discontinuance of portable manual mobile telephone service in IMTS areas.

28. AT&T would have us find that the final clause of Section 214(a) makes certification for discontinuance unnecessary. If improvement to the mobile telephone system by the full implementation of IMTS were alone the case, it is true that certification might not have

[13] For cases involving requirements and compliance with 214(a) certification, see *RCA Communications, Inc.*, 2 F.C.C. 2d 274 (1966); *Pacific Northwest Bell Telephone Co.*, 36 F.C.C. 1284 (1964); and *Carter Mountain Transmission Corp. v. FCC*, 116 U.S. App. D.C. 93, 321 F. 2d 359 (1963), cert. denied, 375 U.S. 951.

[14] AT&T Supplemental Memorandum of Law, p. 11.

[15] AT&T Supplemental Memorandum of Law, pp. 11, 12.

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been required. But implementation of IMTS, with the corresponding exclusion of portable manual telephones, also led to a negative result: An entire class of subscribers was barred from registered service in IMTS areas. Consequently, the qualifying provision of the final clause of Section 214(a) is inapplicable.

29. The 214(a) standard which we would have adhered to, had AT&T applied for certification, would have been whether or not the present or future public convenience and necessity stood to be adversely affected by AT&T's action.[16] The result of the Bell policy was to exclude a communications service offering in IMTS areas despite the fact that the Commission never had an opportunity to scrutinize the company's proposal.

30. AT&T contends that the Commission denied a 1971 complaint regarding AT&T's requirement that manual equipment be replaced with dial equipment upon conversion to IMTS. In a letter written to the complainant by the Administrative Assistant to the Chairman, it was stated that the requirement did not violate Commission rules or regulations.[17] We do not find that the Commission response supports AT&T's argument in the present case, inasmuch as the letter of complaint originated with a conversion of vehicular manual equipment to vehicular automatic equipment; and we have found that the Section 214(a) violation resulted from the discontinuance without certification of portable manual mobile telephone units.

AT&T has violated, and continues to be in violation of Section 203(c) of the Act for failure to amend F.C.C. Tariff No. 263

31. Section 203(c) of the Act provides:

> . . . No carrier . . . shall . . . (3) employ or enforce any practices . . . [for interstate communications] except as specified in . . . [the appropriate] schedule.

AT&T's F.C.C. Tariff No. 263 applies to long distance message telecommunications service offered by the company. The tariff does not reflect the exclusion of manual mobile telephones from registered service in IMTS areas. From February 1, 1969 to the present, the only interstate tariff limitations on service to vehicles in AT&T's tariff are:

> Public Land Mobile Service is available to vehicles equipped for this service when within range of a Base Station through which service is furnished. Service is subject to transmission, atmospheric and like limitation. (Tariff F.C.C. No. 263, Section 3.4.1(a)(2).)
>
> Stations other than vehicles [as for instance portable mobile telephones] which are authorized by the Federal Communications Commission to communicate with a base station are considered as vehicles. (Tariff F.C.C. No. 263, Section 3.4.1(a)(2).)

32. We reject AT&T's argument that the Commission has no tariff jurisdiction over land mobile telephone service. The company contends that, pursuant to its tariffs filed with state regulatory agencies,

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[16] *Western Union Division, Commercial Telegraphers' Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), aff'd. 338 U.S. 864.

[17] Letter dated June 21, 1973 to Honorable Edward Gurney from Robert V. Cahill, Administrative Assistant to the Chairman, Reference: Station KL8329.

the Bell System operating companies require that customers who utilize their own equipment employ dial mobile telephones. It is the company's opinion that these state tariffs suffice to inform applicants what the mobile telephone requirements consist of.[18] This statement is true only insofar as local service is provided for in state tariffs, and not to F.C.C. Tariff No. 263 which applies to interstate communications offered by the Bell companies. There is nothing in F.C.C. Tariff No. 263 to notify a prospective user of a mobile telephone service what limitations are imposed upon the use of his equipment beyond the brief information that we have noted at paragraph 31, *supra*.

33. AT&T maintains that this entire controversy originates with the provision of exchange equipment, and is therefore within the jurisdiction of state regulatory authorities. In support of its conclusions, it cites Section 221(b) of the Act (47 U.S.C. 221(b)) and Public Notice, 1 F.C.C. 2d 830 (1965). As we pointed out in our Order, neither source supports the contention that this Commission lacks jurisdiction over the tariff matter in issue.[19] Since F.C.C. Tariff No. 263 included the provision of service to both vehicular and non-vehicular mobile telephone customers, the blanket policy, which excluded all registry of non-vehicular equipment in IMTS areas and required automatic dial equipment exclusively, constituted a change in AT&T's service offering in interstate communications and placed a limitation on that service without changing the tariff. To do so, clearly violated the Act.

ULTIMATE CONCLUSIONS

34. Having found AT&T in violation of Sections 201(a), 202(a), 203(c), and 214(a) of the Act, we are presented with the difficult task of fashioning sanctions for the violations. On one hand, we have before us multiple and clear violations of the Act, and on the other hand AT&T's understandable goal to convert its mobile telephone system as quickly as possible from manual to automatic dial service. Undoubtedly automatic mobile telephones were a more efficient and acceptable instrument for this service. In addition, we have facts that reflect the small number of portable manual mobile telephones affected by AT&T's exclusionary policy. We feel that as a result of the proceedings before this Commission, the Court is now in a position to proceed on the antitrust matters pending before it.

35. Under the circumstances, we have decided to levy a forfeiture for the single violation of not complying with the tariff provisions of Section 203(c) of the Act. However, before reaching a suitable amount for forfeiture, further facts regarding the extent of the Section 203 (c) violation must be elicited. This will be accomplished by an appropriate staff letter to be transmitted to AT&T.

[18] *AT&T Supplemental Memorandum of Law*, p. 3.
[19] *Order*, FCC 73-791, paras. 18-20.

36. Accordingly, IT IS ORDERED, That this Memorandum Opinion and Order and our Order for oral argument, supra., be transmitted forthwith to the Honorable Oliver Gasch, Judge United States District Court for the District of Columbia, in compliance with the Court's Memorandum-Order of December 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1138

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
CLEARVIEW CABLE TV
For Waiver of Section 76.11 of Commission Rules

OCTOBER 31, 1973.

JONATHAN SCHOCHOR, ESQ.,
McKenna, Wilkinson & Kittner
1150 Seventeenth Street NW.,
Washington, D.C. 20036

DEAR MR. SCHOCHOR: On October 9, 1973, you filed a "Request for Special Temporary Authorization" (CSR–476) on behalf of Clearview Cable TV, operator of cable television systems at Tallahassee, Panama City, Callaway, Parker, Springfield and Cedar Grove, Florida. Clearview Cable TV seeks authority to carry the signal of Station WDTB–TV, Channel 13 (NBC), Panama City, Florida which was granted program test authority October 3, 1973, on its cable television systems until action can be taken on its pending applications for Certificates of Compliance (CAC–2989—2994).

In support of this request, the following matters are stressed:

(a) that each of the systems is located wholly outside of major television markets, but within at least the predicted Grade B contour of Station WDTB–TV;
(b) that WDTB–TV is a commercial television station licensed to a community in a smaller television market, which entitles WDTB–TV to carriage pursuant to Section 76.59(a)(3) of the Commission's Rules;
(c) that WDTB–TV requested carriage which prompted Clearview to file applications for Certificates of Compliance;
(d) that in view of the many applications now on file, action on these uncontested applications is several months away;
(e) and that such delay in carriage cannot assist Station WDTB–TV in establishing itself in the Panama City market. In this regard, Panhandle Broadcasting Company, Inc., permittee of Station WDTB–TV, supports Clearview's request.

In these circumstances, the Commission herewith waives Section 76.11 of the Commission's Rules to allow immediate carriage of Station WDTB–TV by the above-listed cable television systems operated by Clearview Cable TV. This authorization will expire for each system fifteen (15) days after final Commission action on its pending application for Certificate of Compliance.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1208

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of COMMUNITY TELEVISION, INC., READING, OHIO	CAC-1300 OH275
COMMUNITY TELEVISION, INC., LOCKLAND, OHIO For Certificates of Compliance	CAC-1304 OH274

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 30, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT

1. On September 28, 1972, Community Television, Inc., filed applications for certificates of compliance to initiate cable television service at Reading and Lockland, Ohio.[1] Both communities are located within the specified zone of the 17th-ranked Cincinnati, Ohio-Newport, Kentucky television market. From a common headend to be located in Reading, Community proposes to supply subscribers with signals of the following television broadcast stations:

WLWT (NBC, Channel 5), Cincinnati, Ohio
WKRC-TV (ABC, Channel 12), Cincinnati, Ohio
WCPO-TV (CBS, Channel 9), Cincinnati, Ohio
WCET (Educ., Channel 48), Cincinnati, Ohio
WXIX-TV (Ind., Channel 19), Newport, Kentucky
WTTV (Ind., Channel 4), Bloomington, Indiana
WKBF-TV (Ind., Channel 61), Cleveland, Ohio
WOET (Educ., Channel 16), Kettering, Ohio
WMUB (Educ., Channel 14), Oxford, Ohio
WCVN (Educ., Channel 54), Covington, Kentucky

Carriage of these signals would be fully consistent with Section 76.61 of our Rules.

2. Community's Reading application is opposed by Taft Broadcasting Company, licensee of WKRC-TV, Cincinnati, Ohio. Taft calls our attention to Section 24 of the Reading franchise, which provides, in part, that:

> All conditions and provisions contained herein for both the proposed Ordinance and Service Agreement, shall be in effect as agreed upon and/or set forth at time of franchise grant, only after the now pending Revised Copyright and Importation of distant signal dilemma, has been resolved by the FCC and the Congress of the United States.[2]

[1] 1970 Census figures indicates that Reading has a population of 14,416, and that Lockland has a population of 5,240. The proposed systems will have at least 20-channel capacity, and will provide all required access channels, pursuant to Section 76.251(a).

[2] Although not raised in the objection to Community's Lockland application, an identical provision is embodied as Section 25 of that city's franchise.

Taft contends that, inasmuch as the copyright and distant signal "dilemma" has been resolved neither by this Commission nor by Congress, the Reading franchise is not yet effective and that, accordingly, certification by the Commission at this time would be premature.

3. Community's Lockland application is opposed by WXIX–TV, Inc., licensee of WXIX–TV, Newport, Kentucky. WXIX–TV contends that Community's plan to build access production facilities to be shared by the two communities is in violation of Section 76.251(a)(4) of our Rules, and cites language from the *Cable Television Report and Order* and its *Reconsideration* to support this contention.[3] In its reply, Community reassures us of its intent to provide separate access channels for each community, and contends that, because of the relatively small populations of both communities, and because of the close proximity between the proposed studio location and the center of each city[4] the public interest will "in no way . . . be harmed by the absence of a separate production facility in the community of Lockland." Community asserts that its plan for shared production facilities is proposed as an economy measure, and that the public interest would best be served by allowing Community to construct its systems "on a basis which would be most compatible with the systems' ultimate economic success, assuring further service to the pertinent communities."

4. In adopting our new cable television rules, we anticipated hardships that would be incurred by systems in smaller communities that, because of their location, would be required to comply with the access requirements imposed upon systems operating within major television markets. Specifically, we indicated that systems in these communities might be able to meet their obligations through "joint building" projects.[5] We noted, further, our willingness, on a case-by-case basis, to relieve some of the burdens imposed by our access requirements, if, during the certificating process, we were provided with "sufficient detailed information concerning the systems' ability to comply."[6] We have, upon proper showings, permitted cable systems to construct access studio and production facilities to be shared by more than one community. *Information Transfer, Inc.*, FCC 72–1094, 38 FCC 2d 335 (1972); *Coldwater Cablevision, Inc.*, FCC 73–281, 40 FCC 2d 58 (1973); *Storer Cable TV, Inc.*, FCC 73–469, 40 FCC 2d 1022 (1973). We conclude that Community has adequately demonstrated the need for a partial waiver of 76.251(a)(4) for the above-captioned systems.

5. Section 76.31(a) of our Rules requires that an existing or proposed cable television system, in order to obtain a certificate of compliance "shall have a franchise or other appropriate authorization" from a local or state governmental authority. The franchises submitted with Community's Reading and Lockland applications are,

[3] *Cable Television Report and Order*, 36 FCC 2d 143 (1972), paragraph 142, *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972), paragraph 90, n. 36.

[4] Community proposes to construct its production studios in the city of Reading, at a location approximately three blocks from the Reading City Hall and approximately one and one-half miles from the Lockland City Hall.

[5] *Cable Television Report and Order*, 36 FCC 2d 143 (1972), paragraph 147.

[6] *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, 36 FCC 2d 326 (1972), paragraph 90.

by their own terms, ineffective until the copyright and distant signal "dilemma" is resolved by this Commission and by the Congress. Because Community has not obtained presently effective franchises from either community, its applications for certificates of compliance must, pursuant to Section 76.31(a), be denied at this time.

6. Although not raised in the objections, we believe it appropriate to note certain other variations in Community's franchises that would be sufficient in themselves to warrant denial of certificates of compliance. The Lockland franchise was awarded on July 17, 1972, and accordingly, full compliance with the franchise standards set forth in Section 76.31 is required. Nothing in the franchise indicates that Community's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, were approved as part of a full public proceeding affording due process. See Section 76.31(a)(1). The franchise requires only that Community string five miles of cable within three years after receiving final certification and approval. Section 76.31(a)(2). The initial franchise period is for 25 years, longer than our maximum permissible period of 15 years. Section 76.31(a)(3). The franchise does not specify procedures for the investigation and resolution of service complaints, and does not require Community to maintain a local office or agent for subscriber complaint purposes. Section 76.31(a)(5). The Reading franchise was awarded on November 3, 1970. Therefore, only "substantial consistency" with Section 76.31 is required until March 31, 1977. *See CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10, *reconsideration denied*, FCC 73–293, 40 FCC 2d 293. Except for some variations,[7] the Reading franchise is identical to the Lockland franchise. Accordingly, for the reasons discussed above, we conclude that the Reading franchise is not "substantially consistent" with Section 76.31.

7. Because our denial of these applications is based upon our conclusion that the submitted franchises do not achieve the required degrees of conformity with Section 76.31, our action today will be without prejudice to its reconsideration in connection with the submission of amended franchises. *See Leacom, Inc.*, FCC 73–292, 40 FCC 2d 129, *reconsideration granted*, FCC 73–412, 40 FCC 2d 693.

Accordingly, IT IS ORDERED, That the "Objection to Application for Certificate of Compliance," filed November 27, 1972, by WXIX–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the Opposition filed December 1, 1972, on behalf of Taft Broadcasting Company, IS GRANTED, to the extent indicated above and in all other respects IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned applications for Certificates of Compliance, filed by Community Television, Inc., ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[7] The Reading franchise is for the permissible period of 15 years, and Community is required in Reading to string five miles of cable within one year after receiving final certification and approval.

F.C.C. 73-1174

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition by
CRAWFORDSVILLE COMMUNITY CABLE CORP.,
CRAWFORDSVILLE, IND.
For Special Relief and for Special Authority

NOVEMBER 14, 1973.

In Re: Crawfordsville Community Cable Corp., CAC-2970 IN014.

DONALD D. WEAR, JR., ESQ.,
Dow, Lohnes & Albertson,
1225 Connecticut Avenue,
Washington, D.C. 20036

DEAR MR. WEAR: On October 17, 1973, you filed a "Petition for Special Relief and Request for Special Temporary Authority" on behalf of Crawfordsville Community Cable Corp., operator of a cable television system at Crawfordsville, Indiana. Crawfordsville seeks authority to carry the signal of Station WIIL-TV, Channel 38 (ABC), Terre Haute, Indiana, on its cable television system pending action on its unopposed application for the above-referenced Certificate of Compliance.

In support of its request, the following matters are stressed:

(a) That the cable system is located within a smaller television market (Lafayette, Indiana), and the predicted Grade B contour of Station WIIL-TV;
(b) That WIIL-TV is a UHF, commercial television station licensed to a community in a smaller television market, which entitles it to carriage pursuant to Section 76.59(a)(3) of the Commission's Rules;
(c) That WIIL-TV requested carriage which prompted Crawfordsville to file an application for a Certificate of Compliance;
(d) That in view of the many applications now on file, action on these uncontested applications is likely to be some months away;
(e) And that such delay in carriage cannot assist Station WIIL-TV in establishing itself in the Lafayette market. In this regard, Alpha Broadcasting Corp., permittee of Station WIIL-TV, supports Crawfordsville's request.

In these circumstances, the Commission herewith waives Section 76.11 of the Commission's Rules to allow immediate carriage of Station WIIL-TV by the cable television system operated by Crawfordsville Community Cable Corporation. This authorization will expire fifteen (15) days after final Commission action on its pending application for a Certificate of Compliance.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73R-393

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of DAILY TELEGRAPH PRINTING CO. (WBTW-TV), FLORENCE, S.C. For Construction Permit To Change Facilities	Docket No. 18650 File No. BPCT-4162

APPEARANCES

Alan C. Campbell and *Thomas H. Wall*, on behalf of Daily Telegraph Printing Company; *Charles O. Verill, Jr.*, *George Blow* and *Robinson O. Everett*, on behalf of Triangle Telecasters, Inc.; *Robert A. Marmet* and *Gordon R. Malick*, on behalf of Cumberland Broadcasting Corporation; and *Jay L. Witkin*, *P. W. Valicenti* and *Joseph Chachkin* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

SUPPLEMENTAL DECISION

(Adopted November 28, 1973; Released December 4, 1973)

BY THE REVIEW BOARD: BERKEMEYER AND PINCOCK. BOARD MEMBER KESSLER DISSENTING WITH STATEMENT.

1. This is a UHF impact proceeding in which the application of Daily Telegraph Printing Company (Daily Telegraph), licensee of VHF television broadcast station WBTW(TV), Florence, South Carolina, for authority to increase antenna height, move its transmitter site, and make certain other technical changes has been opposed by Station WRDU, the UHF television licensee in Durham, North Carolina.[1] The Review Board released a Decision (36 FCC 2d 4, 24 RR 2d 877) on July 5, 1972, (reconsideration denied, 37 FCC 2d 428), in which it concluded that a grant of Daily Telegraph's application "... would, at most, occasion only minimal, if not highly conjectural, UHF impact."[2] The case is now before the Board on remand (FCC

[1] The application was designated for hearing by Order, FCC 69-943, 19 FCC 2d 247, released September 2, 1969, under the following issues:

1. To determine whether a grant of the application would impair the ability of authorized and prospective UHF television broadcast stations in the area to compete effectively, or would jeopardize, in whole or in part, the continuation of existing UHF television service.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether a grant of the application would serve the public interest, convenience and necessity.

[2] The Review Board reversed the Administrative Law Judge's Initial Decision in which he concluded that Daily Telegraph's application would impair the ability of UHF television broadcast Station WRDU, Durham, North Carolina, to improve its operation by increasing its off-the-air audience in the Fayetteville, North Carolina, area, and further augment its audience through the possible acquisition of a prospective satellite station, WCCT, located in Fayetteville.

73–326, 26 RR 2d 1656) released March 23, 1973, from the Commission for consideration of relevant data which has become available since the record was closed, and for issuance of a supplemental decision. The Board requested the parties to submit stipulations as to the relevant data and their views thereon. Subsequently, a multi-part stipulation was filed, as well as the views and counterviews of the parties.[3]

2. The Review Board has carefully reconsidered its Decision in light of the Commission's Memorandum Opinion and Order, FCC 73–326, *supra*,[4] a re-examaination of the record, the recently-filed stipulation and the pleadings of the parties.[5] As the Commission contemplated, the stipulation notes certain information which both updates and complements the findings and conclusions contained in our Decision. Significantly, the stipulation contains some comprehensive market studies, which, when considered in conjunction with the record evidence, indicate some of the competitive trends in the prospective overlap area. In the Board's view, however, the data in the stipulation serves to reinforce the judgment that there is no realistic basis for finding that grant of Daily Telegraph's application will appreciably affect WRDU.

3. In its Decision, the Review Board concluded that WRDU's continued existence as a viable UHF television service was and would continue to be jeopardized because of inability to compete effectively with Stations WRAL and WTVD in the principal communities of Raleigh-Durham. Noting that Station WBTW's proposed signal would not reach either of these cities, the Board reasoned that with the only NBC affiliated-station serving the metro area of Raleigh-Durham,[6] WRDU would presumptively be in a better position to redress the rather marked competitive imbalance which has existed in the heart of the market. With respect to the entire proposed overlap area, all of which would be located outside of the Raleigh-Durham metro area, the Board held that since the overlap area already receives a plethora of television services, a grant of WBTW's application would result merely in an intrusion of one more signal into a web of established network competition. See paragraphs 14 and 15 of the Board's Decision. More important, the Board emphasized that most of the proposed overlap area already receives an NBC signal from VHF Station WECT, Wilmington, North Carolina; and the Board saw no basis for

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[3] The following pleadings were filed: (a) stipulation, filed May 29, 1973, by Daily Telegraph and Triangle; (b) comments on (a), filed June 6, 1973, by Daily Telegraph; (c) views on (a), filed June 6, 1973, by Triangle; (d) reply to (b), filed July 16, 1973, by the Broadcast Bureau; (e) reply to (c), filed July 16, 1973, by Daily Telegraph; and (f) reply to (b), filed July 16, by Triangle.

[4] Upon remanding this proceeding to the Board, the Commission gave two general directives concerning the matters to be treated upon reconsideration. The Commission indicated that the Board, as an initial matter, should consider any relevant data which has become available since the record was closed in 1970, so that impact on WRDU "may be ascertained upon a more fully informed basis", and, additionally, "it should re-examine the question of whether a grant of Daily Telegraph's application would impair the ability of any potential UHF television broadcast stations to compete effectively." In this latter connection, the Commission stated that the Board should particularly note "the availability of other allocated UHF channels in several communities in the area under consideration."

[5] None of the parties have requested oral argument, and the Board is of the view that additional argument is unnecessary for a resolution of this case.

[6] Subsequent to the closing of the record, on August 30, 1971, NBC signed an affiliation agreement with Station WRDU. Prior to this time, WRDU conceded that its financial difficulties had been primarily attributable to its lack of full network affiliation.

concluding that the increase in WBTW's CBS signal would perceptibly add to WRDU's difficulties, since the two facilities would not be in direct competition for network audiences. Specifically, the Review Board concluded that there would be no real potential for WRDU to develop a significant audience in Cumberland County or in the City of Fayetteville. In the latter areas, the Board found that WRDU is in a highly disadvantageous competitive position with respect to another NBC affiliate,[7] and that it is faced with substantial competition for non-network programming from three other Grade B or better signals and ten other stations carried on the Fayetteville CATV system.[8] Further, the Board found that Triangle's proposal to operate UHF Channel 40 as a satellite of WRDU in Fayetteville is not a feasible proposal, the satellite operation being contingent upon obtaining NBC network authorization which NBC had refused to give. Finally, based upon the uncontroverted record testimony, the Board concluded that the only economically feasible means for operating a UHF facility in Fayetteville would be to operate it as a satellite of WRDU, and that absent such an operation, there appeared to be no potential for activating either of the two UHF channels allocated to that community.

4. In its views on the stipulation, Triangle alleges that because it has increased its audience shared in Cumberland County [9] from 0.2% in 1969 to 2.0% in February/March 1973, ". . . it is clear that continued trends in this direction will, given the opportunity, make Triangle a significant competitor in that market." A grant of Daily Telegraph's application would, Triangle avers, have an important effect on that potential trend. In this connection, WRDU suggests that it is able to hold its own against the existing operation of WBTW, noting that WBTW's audience share decreased from 1.6% to 1.0% in Cumberland County between 1969 and 1973, and that WRDU currently garners a 8,000 Net Weekly Circulation (NWC),[10] as opposed to 8,700 for WBTW. With respect to the Area of Dominant Influence (ADI)[11] as a whole, Triangle alleges that it had a substantial increase in its ratings [12] in 1971, and that its ratings, as well as those of all other stations in the Raleigh-Durham market, have remained relatively stable since that time. With regard to other UHF allocations in the area, WRDU confines its discussion to Fayetteville; it argues that potential does exist in this community because CBS at one time had indicated a willingness to permit Triangle to operate Station WCCT in Fayetteville

[7] The NBC affiliate, WECT, Wilmington, North Carolina, places a Grade A signal over Fayetteville, whereas WRDU places a Grade B signal; moreover, WECT has priority over WRDU for network programming on the Fayetteville CATV system.

[8] In this connection, the Board adopted the Administrative Law Judge's finding that a majority of residents of Fayetteville are not dependent upon the quality of off-the-air signals; it is noteworthy that all of the signals received off-the-air are also carried on cable.

[9] The objector contends that Cumberland County constitutes a significant portion of its potential market; thus, WRDU points to the fact that the county is one of the larger counties in the ADI, as well as to the fact that its population increased 43% between 1960 and 1970.

[10] This concept refers to the estimated number of unduplicated television households which viewed a station for at least five continuous minutes during the week.

[11] ADI refers to an exclusive geographical area consisting of all counties in which the home-market stations receive a preponderance of total viewing hours.

[12] Rating is the estimated number of television households tuned to a particular station for at least five minutes during an average quarter-hour of reported time period.

as a satellite.[13] Finally, WRDU contends that it is closer to becoming a successful operation; it has reduced its operating loss from $488,000 for 1969 to $228,000 for 1972 (half of this was depreciation), and its monthly net cash outflow has been halved (to under $10,000); thus Triangle concludes that the intrusion of another signal into the Fayetteville market could prevent WRDU from achieving economic health. The Broadcast Bureau is in substantial agreement with Triangle, arguing that WRDU's audience share increase in the Cumberland County market can be regarded as significant.

5. Daily Telegraph, in its comments on the stipulation, contends that the ADI is a concept which may, as it does in this case, have little significance for an individual station licensed to a market. On the contrary, the applicant notes, the composition of the Raleigh-Durham market is and has been determined by the audience shares generated by Stations WRAL and WTVD. As a result, WBTW argues, the stipulation serves to reinforce the Board's determination that if WRDU is to succeed, it must do so in the heart of the Raleigh-Durham market, rather than in the six counties which would receive increased overlap from WBTW if its application were to be granted. Thus, Daily Telegraph points out that since 1969, WRDU has obtained its largest audience gains in the three Raleigh-Durham Metro counties, generally more modest gains in three other ADI counties which are contiguous to the Metro counties, but has advanced only slightly, if at all, in the remaining eight Raleigh-Durham counties.[14] Based upon the trends indicated in the stipulation, Daily Telegraph argues that WRDU has not and will not be able to develop a "significant" audience in the six Raleigh-Durham counties which would receive increased overlap, inasmuch as WRDU has no audience share in three of these counties, a 2% share in both Harnett and Cumberland Counties and a 6% share in Lee County.

[13] It should be noted that this "willingness" was oral, obtained before the record was closed in 1970, and before WRDU became a full-time NBC affiliate; there is no evidence, whatsoever, of any current CBS interest in such an operation.

[14] Specifically, Daily Telegraph related the following:

Raleigh-Durham ADI County	WRDU total audience share			Raleigh-Durham market total share of each county 1972
	1969	1972	Increment	
Durham (M)	3.4%	11.0%	(7.6%)	87%
Orange (M)	3.0	10.0	(7.0)	74
Wake (M)	0.7	6.0	(5.3)	88
Granville	1.6	7.0	(5.4)	94
Vance	0	6.0	(6.0)	96
*Lee	1.0	6.0	(5.0)	71
*Cumberland	0.2	2.0	(1.8)	70
Franklin	0	1.0	(1.0)	88
*Harnett	1.0	2.0	(1.0)	92
*Hoke	0	0	----------	55
Person	0.4	0	(−0.4)	59
*Johnston	0	0	----------	84
*Sampson	0.2	0	(−0.2)	57
Warren	0	0	----------	94

(M) refers to Metro County.
*Refers to those counties which will receive increased overlap if the WBTW application were to be granted.

6. Noting that WRDU has increased its audience share to 2.0% in Cumberland County, the applicant, nevertheless, argues that WRDU's limited audience increase clearly demonstrates that it will not obtain a significant viewership in that county. The conclusion becomes more compelling, Daily Telegraph argues, in light of the fact that even though WRDU has become a full-time NBC affiliate, it has not garnered a substantial audience in the county. Rather, WBTW contends, WRDU is faced with direct and formidable competition for NBC audience from that network's VHF affiliate in Wilmington (WECT); and, further, the stipulation clearly shows that WRDU is not able to compete effectively with WECT.[15] With respect to WBTW's impact on potential UHF stations, Daily Telegraph argues that there is no real potential for such an operation in Fayetteville. In this regard, WBTW asserts that WRDU's contention that Fayetteville receives only [four] off-the-air Grade B or better signals is misleading; in actual fact, Fayetteville also has a rapidly-growing cable system which carries eleven signals.[16]

7. In addition to informing the Review Board that the construction permit for Channel 40, Fayetteville, North Carolina, and all related applications have been cancelled and/or dismissed, and that no applications for either of the Fayetteville UHF allocations have been filed, the parties submitted an eight-part stipulation. Since some of the critical remand exhibits are composed of raw American Research Bureau (ARB) and U.S. Census data, the Board will describe and attempt to analyze these exhibits.

8. Exhibit R–B of the stipulation provides a general description of the Raleigh-Durham ADI. According to the audience estimates contained in this exhibit, the ratings[17] for the six stations which serve the market have remained relatively unchanged during the period between November 1971, and February/March 1973. This is reflected in the ratings for both the ADI and the Raleigh-Durham Metro rating area, including, *inter alia*, the ratings for prime time and early fringe time. Thus, WRDU's ratings do not indicate any improvement in competitive position *vis a vis* WRAL and WTVD

[15] In this regard, WBTW argues that it is apparent the difference between the network affiliations of WBTW (CBS) and WRDU (NBC) would minimize any potential impact. This conclusion is buttressed by the following table:

Share of audience 1969–1972

County	1969			1972		
	WRDU	Raleigh-Durham market, total share of each county	WECT	WRDU	Raleigh-Durham market, total share of each county	WECT
Cumberland	.2%	86.7%	4.7%	2%	70%	21%
Hoke	0	81.1	3.3	0	55	38
Sampson	.2	69.9	13.2	0	57	30

[16] WBTW states that as of May 1970, the system had 10,746 subscribers; as of December 1971, the system had increased substantially to 15,995 subscribers.

[17] In this particular ARB study, rating refers to the estimated number of television households tuned into a particular station for at least five continuous minutes during an average quarter-hour of reported time period.

in either the ADI as a whole or in its principal communities, even though, during the entire period covered by the ratings WRDU was an NBC affiliate.[18] What is more important in the ADI, WRDU has not succeeded in increasing its ratings in comparison with its primary NBC competitor, WECT; rather, WECT has maintained a slight margin over WRDU during both prime time and early fringe time, the period which is customarily devoted to local or independent programming. As stated before, WECT does not serve the Metro area of Raleigh-Durham; yet, even though WRDU does not have WECT competition in its home market, it obtains only slightly higher ratings (from two to three points) in the Metro rating area than it does throughout the ADI.

9. Exhibit R–H contains audience survey data[19] for the eight Raleigh-Durham ADI counties which would not receive overlap as a result of a grant of WBTW's application. The ARB studies which comprise this exhibit, when compared with similar studies for 1969, which are a part of the original hearing record, show that despite meaningful increases in its audience share[20] in some of the counties, WRDU continues to suffer from a serious competitive imbalance both within the three metro counties of Durham, Wake and Orange and within the five contiguous counties. In its home county of Durham, WRDU has increased its audience share from 3.4% in 1969 to 11%, but this compares with 33% for WRAL (ABC), 43% for WTVD (CBS), 2% for WGHP (ABC, Greensboro), and 7% for WFMY (CBS). No other NBC affiliate has a measurable audience share in this county. In the metro county of Wake, WRDU now has 6% instead of the 0.7% of 1969, but this still leaves it far behind WRAL's 43% and WTVD's 39%. Four distant stations have one or two percent shares in Wake County. WRDU now has an audience share of 10% in Orange,

[18] The following figures indicate ratings for four out of the six stations which serve the market:

Raleigh-Durham

	WRAL-ABC		WTVD-CBS		WRDU-NBC		WECT-NBC	
	ADI	Metro	ADI	Metro	ADI	Metro	ADI	Metro
November 1971:								
Fringe	20	21	22	19	1	1	3	
Prime	23	22	22	21	4	7	5	
Feb./March 1972:								
Fringe	21	19	22	20	1	2	4	
Prime	21	21	24	24	4	7	4	
November 1972:								
Fringe	18	17	19	22	1	2	3	
Prime	22	23	23	21	3	6	5	
Feb./March 1973:								
Fringe	19	18	19	21	1	1	4	
Prime	23	22	22	21	3	5	4	

WGHP (ABC) and WFMY (CBS), which present little competition to either WRAL (ABC) or WTVD (CBS), are omitted from above; their ratings tend to be somewhat lower than those of WRDU.

[19] The data in this exhibit are based on market surveys conducted both before and after (as much as seven months after) WRDU became an affiliate of NBC.

[20] Audience share refers to an individual station's share of the weekly hours viewed in the county.

the third metro county, compared with 3% in 1969, but WRAL has 28% and WTVD has 36%. One distant station, WFMY (CBS) has a 12% share.

10. The remaining five counties in the ADI will not receive increased coverage from WBTW if the application is granted, and Exhibit R–H also contains more recent ARB data for them. In only two of these counties, Granville and Vance, both of which lie northeast of Durham, has WRDU increased its audience share significantly, although still falling far behind the share for WRAL and WTVD. In the other three counties WRDU still has not been able to acquire a meaningful audience share.[21]

11. Exhibit R–A contains audience survey data [22] for the six counties, now served by WRDU with a Grade B or better signal, which will receive increased overlap if WBTW is granted; these counties are Lee, Harnett, Hoke, Johnston, Sampson and Cumberland. Essentially, it is WRDU's contention that it will be able to improve its competitive position in these counties if additional competition from WBTW is foreclosed, particularly in Cumberland county. A county by county analysis of the data available in the hearing record and stipulation will be useful in judging this assertion.

12. *Lee County.* WRDU serves all of Lee County with a Grade A signal. WECT, the only other NBC affiliated station serving the county, covers all of it with a Grade B signal. Between 1969 and 1972 WRDU was able to increase its audience share from 1% to 6% and WECT from 0% to 2%. WRDU already has competition from two ABC and two CBS affiliated stations. The two ABC stations are WRAL serving the whole county with a Grade B or better signal and WGHP (Greensboro) which covers most of the county with a Grade A. WTVD and WFMY (Greensboro) are the two CBS stations; the former provides all the county with Grade A and the latter all with Grade B. ABC has an audience share in Lee County of 43% (WRAL 27% and WGHP 16%), and CBS has an audience share of 46% (WTVD 37% and WFMY 9%). The total audience share for NBC is only 8%. If granted, WBTW would cover approximately one-half of Lee County with a Grade B signal. WRDU has been able to increase

[21] Specifically, the audience share breakdown (the figure in parenthesis after each WRDU entry is the comparable 1969 figure for that station) is as follows:

	ABC	CBS	NBC
Granville County	WRAL 40% WGHP 1%	WTVD 47% WFMY 2%	WRDU 7% (1.6)
Person County	WRAL 27% WGHP 12%	WTVD 32% WGHP 1%	WSJS 2% WSLS 6%
Vance County	WLVA 9% WRAL 44%	WDBJ 9% WTVD 47% WNCT 1%	WRDU 0 (0.4) WRDU 6% (0) WITN 1%
Warren County	WRAL 47% WXEX 1%	WFMY 1% WTVD 47% WNCT 3%	WITN 2% WRDU 0 (0)
Franklin County	WRAL 42%	WTVD 45% WNCT 6%	WRDU 1% (0) WITN 4%

[22] See footnote 19, *supra*, regarding surveys.

its audience share in the county in the face of the above described competition from stations which provide a stronger signal and cover more of the area than WBTW would if granted. Both of the CBS affiliated stations provide a better signal and serve more of the county than WBTW would if granted. Under these circumstances, and with the potential which having the only Grade A, NBC affiliated signal in the county offers, it would be pure conjecture to conclude that WBTW, operating as proposed, would prevent WRDU from maintaining or improving its competitive position in Lee County.

13. *Harnett County.* WRDU serves well over half of this county with a Grade A signal and reaches the remainder with a Grade B. Two other NBC stations serve the county; WECT covers the entire area with a Grade B and WITN (Washington) serves the eastern edge with a Grade B. Between 1969 and 1972, WRDU increased its audience share from 1% to 2%, WITN from 1.6% to 2%, and WECT from 0% to 4%. According to the most recent audience share data, WRDU already faces competition from one ABC affiliated station (WRAL 48%) and one CBS affiliated station (WTVD 42%). WRAL provides a Grade B or better signal to all of the county, and, in addition, WGHP, the ABC-affiliated station in Greensboro covers all but the eastern edge with a Grade B signal although it had no audience share in 1972. WTVD encompasses the entire county in its Grade A contour and the western edge is within the Grade B contour of WFMY, the CBS station in Greensboro, which had no audience share in 1972. ABC's total audience share in Harnett County was 48% in 1972 and CBS's was 42%, but for NBC the comparable share was 8%. A grant of WBTW's application would bring that station's Grade A contour to a small portion of the southernmost tip of the county and its Grade B contour would include about two-thirds of the county. Although WRDU has better coverage of the county than WECT, the latter has had greater success in developing an audience there than has WRDU. Between 1969 and 1972 WRDU was unable to make any appreciable improvement in its audience share and the county continues to be dominated by WRAL and WTVD. If granted, WBTW's signal and coverage will be inferior to that of WRAL, WTVD and WRDU. There continues to be a great potential for the development of any NBC audience in Harnett County. No basis can be found for concluding, under the foregoing circumstances, that the intrusion of WBTW's CBS affiliated signal, which will be substantially inferior to the signal from WTVD, will preclude or adversely affect WRDU's development in the county.

14. *Hoke County.* WRDU provides Grade A service to much less than one-fourth of Hoke County and Grade B to all but approximately one-fourth. WECT, the only other NBC affiliated station serving the county, provides Grade B or better service to the entire county. WRDU had no audience share in Hoke County in either 1969 or 1972 while WECT increased its share from 3.3% in 1969 to 38% in 1972. In 1972, WECT led WRAL (22%) and WTVD (33%) in total audience share. WRDU now faces competition from ABC affiliated stations WRAL, which provides a Grade B or better signal to almost the entire county,

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and WGHP (Greensboro), which provides a Grade B to approximately three-fourths. There is CBS competition from WTVD, serving nearly the whole county with a Grade B or better, and existing WBTW offering a Grade B signal to about one-half. WGHP had an audience share of 5% in 1972 and WBTW had an audience share of 1%, down from the 8.8% share it had in 1969. A grant of WBTW's application will permit that station to cover all but a small fraction of Hoke County with a Grade A signal. On the basis of data now available, WRDU has been unable to compete in Hoke County. It fails to cover the entire area with a Grade B signal. As an NBC affiliate in competition with WECT which serves the whole county, its future does not look promising, as the audience share statistics show, and this is so even without the added competition WBTW would offer. WRDU's total lack of success in Hoke County, and the domination of the area which WECT has demonstrated, make it virtually certain that a grant of WBTW's application will have no effect on WRDU's future.

15. *Johnston County.* Since WBTW would cover less than two square miles of this county with a Grade B signal, there would be no impact on WRDU.

16. *Sampson County.* WRDU provides Grade B service to a small area in the northwestern corner of the county. Thus, the impact from WBTW could not be significant.

17. *Cumberland County.* WRDU's Grade A contour reaches only a small section of Cumberland County and its Grade B encloses about two-thirds, including Fayetteville, the major center of population. The only other off-the-air competition that WRDU faces from an NBC affiliated station is from WECT in Wilmington, which covers about two-thirds of the county, including Fayetteville, with a Grade A signal and the remainder with Grade B. Competition from ABC affiliated stations is provided by WRAL which brings Grade B service to Fayetteville and the entire county and Grade A to a small portion, and by WGHP Greensboro and WWAY Wilmington which cover small sections, not including Fayetteville, in their B contours. Only one station, WTVD, Raleigh-Durham, brings CBS affiliated off-the-air service to Cumberland County; over two-thirds of the county, including Fayetteville, lies within WTVD's Grade A contour and the remainder within the Grade B.[23]

18. Between 1969 and 1972, WRDU, in the competitive situation just described, increased its audience share from 0.2% to 2% while WECT enlarged its share from 4.7% to 21%. WECT's gain was clearly at the expense of its dominant competition from the other two networks, for the data shows that between 1969 and 1972, WRAL's (ABC) share dropped from 36.8% to 32% and WTVD's (CBS) share declined from 49.7% to 36%. WECT's gain in audience share followed

[23] WITN, an NBC affiliated station in Washington, had a very small audience share in the county, and it is carried on the Fayetteville cable system. WITN also provides Grade B service to a small section in the northeastern corner of the county. Three other CBS affiliated stations had very small audience shares in the county according to the most recent record data, although they provide neither a Grade A or Grade B signal to any portion of the county. Two of them, WBTW, the applicant here, and WNCT, Greenville, are carried on the cable system serving Fayetteville.

the grant without hearing of its application to increase power which allowed it to offer Grade A service to Fayetteville. Thus, WECT not only brings a stronger signal to Fayetteville than does WRDU, and serves more of the county, but it also has priority on the cable system for NBC programming. Consequently, despite its affiliation with NBC, WRDU is in a very poor position to realize meaningful improvements in its audience share insofar as competition with WECT is concerned. WRDU has not demonstrated any ability to compete with the other network affiliated stations serving Cumberland County, having only increased its audience share 1.8 percentage points between 1969 and 1972 while WECT was making the notable gains detailed above. Like most of its competition, WRDU has been carried on the cable system during this period. Thus, the remand stipulation data, which shows how WRDU performed in comparison with the period covered in the original hearing record, fails to support WRDU's basic thesis that if not burdened with competition from WBTW, it would be able to make significant improvements in its position in Cumberland County.

19. A grant of WBTW's application will allow that station to cover Fayetteville and about two-thirds of Cumberland County with a Grade A signal and the balance with Grade B. As a result, Fayetteville would be receiving Grade A service from two CBS affiliated stations. It is far more likely, under all the circumstances described, that these two will be in competition with each other for the CBS audience than it is that WBTW will prevent WRDU from achieving what it has been unable to achieve to date. The only future WRDU could have had in Cumberland County would have been through its affiliation with NBC, but that area of development was foreclosed by WECT's entrance into the market. Service to Cumberland County by WBTW cannot have any significant adverse effect on WRDU.

20. Previously, WRDU relied on the possibility of a satellite operation using Fayetteville UHF Station WCCT, but aside from the difficulties inherent in this proposal as noted in the Board's previous decision, all authorization pertaining to WCCT have now been cancelled. There simply is no record evidence to support WRDU's assertion now that such an arrangement might be possible using CBS programming.

21. In the earlier decision, in paragraph 20,[24] the Board analyzed the data then available relating to the competitive situation in Raleigh-Durham and concluded that "WRDU's prospects for survival and economic viability rest with its ability to compete with WRAL and WTVD in its principal communities." In the course of the discussion which preceded this conclusion, the Board observed that "[p]resumably, with a full-time [NBC] affiliation, . . . , WRDU will be in a better position to redress the competitive imbalance which has existed in the Raleigh-Durham market." The statistics submitted in the stipulation do, indeed, show that in its three metro counties WRDU has made appreciable improvements in its audience share, and, overall, it is in these counties that WRDU has made its greatest advances. These data

[24] 36 FCC 2d 4, 12.

also show, however, that in the metro area WRDU still has a long way to go to approach parity with the two VHF stations affiliated with ABC and CBS. It is not possible to draw any precise conclusions whether or not WRDU's improvements stem from the acquisition of an NBC network affiliation, for the most recent surveys upon which the audience share percentages were based were conducted only a short time after WRDU became an NBC affiliate. While its audience share has increased in these three counties, WRDU has not succeeded in translating these improvements into increased ratings, as the material in footnote 18, *supra*, demonstrates,[25] and it should be noted, again, that all of the ratings were for times after WRDU's NBC affiliation occurred. Thus, it would still be accurate to say that the biggest problem WRDU faces in its search for economic success is to achieve something approaching competitive parity with the two other Raleigh-Durham stations in the metro area, and the attainment of that goal is unrelated to a grant of WBTW's application.

22. Turning to consideration of the area in which overlap to WRDU would be increased by a grant to WBTW, the earlier decision concluded, in paragraph 21,[26] that since the two stations are affiliated with different networks, there was no basis for concluding that any improvement which might accrue for WBTW would come at the expense of WRDU. The stipulated evidence supports and strengthens this conclusion. Only four counties are involved, Johnston and Sampson counties having been omitted for the reasons given in paragraphs 15 and 16, *supra*. In only one of these four, Lee, has WRDU been able to increase its audience share to any significant degree, and there it has the distinct advantage of covering the entire county with a Grade A signal. This advantage is particularly significant, because it shows that there are situations in which WRDU may be able to compete effectively against its principal NBC rival, WECT. WECT, while including the entire county in its Grade B contour, provides no Grade A service there. Since WBTW will provide no Grade A service to Lee County, will cover only about half with Grade B, and is affiliated with another network, there are no grounds for concluding that a grant to WBTW will interfere with WRDU's future which lies in enlarging its and NBC's audience share in that county.

23. The discussion in paragraphs 13 and 14, *supra*, show that since 1969, even without added WBTW competition, WRDU has failed to achieve significant audience participation in either Hoke or Harnett county. In both the circumstances are such that it would be unwarranted to conclude that WRDU's future in either is tied to whether or not WBTW's instant application is granted.

24. Cumberland County, which includes Fayetteville, is the one upon which WRDU has put the greatest emphasis in this proceeding. Yet, as indicated in the discussion at paragraph 18, WRDU is not in a good competitive position in this county regardless of what happens to WBTW's application. The largest concentration of population in

[25] The ratings also show that in the ADI as a whole WRDU has failed to improve its position and that WECT, the Wilmington NBC affiliate, is stronger than WRDU.
[26] 36 FCC 2d 4, 13.

Cumberland County resides in Fayetteville and its environs, which are situated centrally in the county, and WRDU's Grade A contour falls considerably short of this area. On the other hand, WECT supplies a Grade A signal to the Fayetteville area since its increase in power was granted, and has now greatly improved its audience share while WRDU, the third station in the ADI which includes Cumberland, has realized only minimal increases. These developments took place without competition of any kind from WBTW. WRDU's difficulties stem from its inability to compete effectively in the Fayetteville area, and the one opportunity which it had for doing so has been seized by WECT with its stronger signal. For the future, as an NBC affiliate, WRDU's problem will continue to be to carve out an audience for its NBC oriented programming, and there is no discernible reason why this task will be made significantly more difficult by the introduction of a signal from CBS affiliated WBTW. It cannot be stressed too strongly that the obstacle to WRDU's future development in Cumberland County is WECT, not WBTW.

25. In the earlier decision, in paragraphs 23 and 24,[27] the Board evaluated the much discussed satellite proposal and the possibility that cable television, which is well developed in Fayetteville, might be helpful to WRDU if WBTW's application is not granted. There is nothing in the present record to put these possibilities in a light more favorable to WRDU; indeed, the opposite is true as the discussion in paragraph 20, *supra*, demonstrates.

26. According to the Table of Assignments,[28] there are only two commercial UHF allocations in the area under consideration in this proceeding (WBTW's Grade B gain area), both of which are located in Fayetteville. As a result, any discussion of potential UHF development must be confined to these two allocations. There is no contention made now that either of the UHF channels allocated to Fayetteville has the slightest chance of being activated as an independent station, with or without the WBTW grant. The stipulated data reinforces the uncontroverted record evidence that the only feasible means for operating a UHF facility in Fayetteville would be to operate it as a satellite of WRDU and there is no longer any reasonable likelihood of this happening even if WBTW's application is denied.[29] In this connection, the Board notes that the size of the Fayetteville market, as an isolated factor, cannot be regarded as determinative of whether a market is capable of supporting a UHF facility. Compare *South Carolina Educational Television Commission* (*WITV*), 39 FCC 2d 180, 26 RR 2d 232 (1973), review denied, FCC 73–508, appeal pending U.S. App. D.C., in which the Board found that the existence of a significant ABC white area in Florence, South Carolina, could be regarded as a reason-

[27] 36 FCC 2d 4, 13–14.
[28] See Section 73.606 of the Commission's Rules.
[29] This situation is readily distinguishable from that encountered in *Jefferson-Pilot Broadcasting Company* (*WBTV*), FCC 73R–329, 28 RR 2d 616 (1973) in which the Review Board held that, since the only record evidence concerning the demise of a UHF station in Greensboro, North Carolina, reflects that it was attributable to poor management and equipment and underfinancing, the Board could not conclude that there was no potential for UHF development in that market.

able indication of UHF potential in that community.[30] However, even if the Board were now to assume that there was some potential for UHF development at the time the record was closed, the stipulated data clearly indicates that, as a practical matter, this potential no longer exists. As discussed, *supra*, the critical fact in our determination is that WECT has not only developed a NBC viewership in Cumberland County and Fayetteville since that time, but that it dominates that viewing.[31] Thus, while it might have been argued previously that a satellite operation could have developed a viable NBC audience in Fayetteville, recent ARB studies indicate that this possibility no longer exists. Similarly, ABC and CBS viewership continues to be dominated by the home market Stations WRAL and WTVD. Finally, the record evidence is barren of any indication that an independent UHF facility could attract a viewership in this relatively small community, which is already served by four off-the-air Grade B or better signals and eleven cable signals.

27. The Board, in the preceding paragraphs, has reexamined its earlier decision pursuant to the Commission's remand order and taken into account "relevant data which has become available since the close of the record herein in 1970." These data unquestionably strengthen the basis of the Board's previous findings and confirm the correctness of the conclusion that a grant to WBTW would not have a significant adverse effect on WRDU or the development of UHF television in the overlap area. The new facts make it abundantly clear that in the overlap counties WRDU faces two principal problems which are not related to WBTW's presence in the market; they are WRDU's noncompetitive signal (only in Lee County where WRDU provides a Grade A signal to the entire county has the station made any significant improvements in its audience share) and the presence of a B or better signal from WECT. In Cumberland County, the most important one in WRDU's view, it is the presence of a Grade A signal from NBC affiliated WECT that has determined WRDU's future and foreclosed its opportunity to take advantage of an NBC network affiliation. It would be both unfair and factually unjustified to conclude that this opportunity having been eliminated, WRDU might, nevertheless, somehow create an audience for itself in the county, but especially in Fayetteville, if only WBTW is kept out with its second Grade A CBS signal in the market.[32] And finally, unless the Board is to ignore totally

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[30] As indicated in footnote 30 of our Decision, 36 FCC 2d 4, *supra*, the Board found that a UHF construction permit in Florence had been abandoned without construction and that there was no showing of any interest or apparent opportunity in this area. This conclusion was not truly relevant to the point to which the footnote was directed. Moreover, it was not consistent with the conclusions reached by the Board in its subsequent decision in *South Carolina Television Commission (WITV) Inc., supra.* The latter conclusion was based upon a more complete hearing record on the point than is contained in the instant case, and in the correct one. Since, as noted above, the statement in the footnote was irrelevant to the question being treated and inaccurate, footnote 30 is amended to delete reference to the UHF situation in Florence.

[31] In this connection, it is important to note that WECT covers Fayetteville with a Grade A signal and has priority for its programming on the rapidly-growing Fayetteville CATV system.

[32] This record contains no evidence from which it might be concluded that somehow WRDU's ability to acquire or buy non-network programming would be adversely affected by a grant to WBTW.

the realities of the competitive situation in the Cumberland County-Fayetteville market, there is simply no basis for concluding that there is a reasonable possibility of an independent UHF station developing there. Thus, the Board concludes, in response to both questions posed in the remand order, that no grounds exist which would warrant reaching a different result from that of the earlier decision.

FEDERAL COMMUNICATIONS COMMISSION,
DONALD J. BERKEMEYER,
Member, Review Board.

DISSENTING STATEMENT OF BOARD MEMBER SYLVIA D. KESSLER

1. No useful purpose would be served by repeating my lengthy prior dissent to the Board's Decision which is, instead, incorporated herein. Briefly, however, I remain of the view that the subject VHF application should be denied, and that although the majority in their Supplemental Decision purport to address themselves to so-called realities, they, in fact, have ignored them. For no consideration whatsoever is given to the fact that VHF Station WBTW, Florence, South Carolina, would not provide a first local service to its city of license; nor would it serve any white or gray areas.

2. The actuality of the situation here is that (a) WRDU, Durham, North Carolina, is not an established UHF station [1]; (b) Fayetteville, North Carolina, with a population of 53,510 persons, is a rapidly growing city of substantial size, without a television station; and (c) VHF Station WBTW's proposal contains none of the elements hitherto regarded essential to justify VHF expansion to the detriment of the development of UHF. Moreover, the Commission has not only *not* receded from its position with respect to UHF protection absent compelling VHF public interest benefits, it has recently reaffirmed its position in rule making proceedings. See, *First Report and Order* [2] (Docket No. 18179), — FCC 2d — (1973), effectuating a 25-mile rule with respect to the geographical exclusivity of television programs produced by non-network suppliers. As indicated on the face of this Report, "the proceeding was begun because of complaints of the non-availability of syndicated programs (due to exclusivity arrangements) made by independent UHF stations...."

3. Obviously, this new rule could have a tremendous effect on the establishment of UHF stations in communities, such as Fayetteville, and on UHF Station WRDU, Durham. Similarly, the Commission's *Comparable Television Tuning* Report (Docket No. 19722), released October 24, 1973, —— FCC 2d ——, could also spur the development of UHF stations in communities, such as Fayetteville, and could aid UHF Station WRDU, Durham.

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[1] See *Broadcasting* July 9, 1973, and its story entitled "A First for UHF: typical station in the black in '72." Quoting the director of NAB's broadcast management, it is stated that "the sustained growth in national and local business over the last two reporting years accounts for the miniscule profit margin of .01% and a bottom-line profit of $12,100." Many of these stations have been in operation since the late fifties; hence, after fifteen years, they are now just emerging into the black. In contrast, WRDU has been in operation for only five years. It commenced its operation in November of 1968.

[2] FCC 73-806, released August 3, 1973.

4. Obvious, too, is the fact that there is a marked inconsistency between the rationale of the majority's Supplemental Decision here and the above described Commission reports. All of these matters, such as, UHF tuning, geographical exclusivity for non-network programs, licensing, etc., are so intimately entwined that any discussion of theory must treat them as one. Yet, the majority in their Supplemental Decision express exactly the opposite philosophy from that which is the predicate of the Commission's continuing interest in fostering, developing and stabilizing UHF television as expressed in these recent reports in order to make UHF a truly competitive force. Surely, in this context there is no rational basis for assuming that in its licensing function, as distinguished from rule making, the Commission intends to go to the other extreme of permitting VHF stations to expand their service areas to the detriment of the development of UHF as a truly competitive force irrespective of the lack of compelling public interest benefits to be derived from such VHF expansion.

5. In short, the realities in a case such as the present one are to permit the prospective application of these new rules to foster the development and stability of UHF stations as a truly competitive force before permitting VHF stations to expand their operations, particularly when there are no compelling concomitant public interest benefits to be achieved by such VHF expansion. Inherently, these considerations played a part in the Board's very recent decision in *Jefferson Standard Broadcasting Company*.[3] —— FCC 2d —— (1973), and the majority's mere rhetoric at Footnote 29 of the subject Supplemental Decision that the situation here is "readily distinguishable" from that in *Jefferson*, *supra*, cannot be considered a satisfactory answer. For in point of fact, the cases are, in principle, non-distinguishable.

[3] FCC 73R–329, released September 19, 1973.

F.C.C. 73–1226

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
LINCOLN DELLER & SYLVIA DELLER, RADIO STATION KMEN, SANTA BARBARA, CALIF.
For Ruling Concerning Use Of Combination Rates

NOVEMBER 21, 1973.

LINCOLN DELLER & SYLVIA DELLER,
Radio Station KMEN,
c/o P.O. Box 5385,
Santa Barbara, Calif. 93108.

DEAR MR. & MRS. DELLER: This is with reference to your letter of August 8, 1973, in regard to the Commission's letter of July 18, 1973, concerning a proposal by ValJon, Inc., former licensee of KMEN, to use combination rates with Station KOLA(FM), San Bernardino, California.

As you will recall, ValJon, Inc., proposed that the stations be priced separately as well as jointly (i.e., the local rates would be separate and national rates joint), and that advertisers would be offered a reduced rate to purchase time on both stations. In support of the request ValJon, Inc. stated that KFXM and KDUO, San Bernardino, California, both licensed to KFXM Broadcasting Company, sold advertising to local and national advertisers at a group discount, and that this gave the stations a competitive advantage. It stated further that it would suffer severely in obtaining local and national advertising if it could not compete on the same basis, and contended that because of the competitive condition in San Bernardino, its proposal would not violate the Commission's policy set forth in the 1963 Public Notice concerning combination advertising rates.

The Commission stated in reply:

> In regard to the offering of combination rates by a licensee of more than one broadcast station in the same area (e.g., KFXM Broadcasting Company), the Commission has taken the position that such practices are not contrary to the public interest if the rate arrangement offered is voluntary (i.e., there is no requirement that the advertiser in order to place advertising on one station also must buy time on one of the licensee's other stations) and if the practice is not employed to advance unfairly a competitive position. See *Indianapolis Broadcasting, Inc.*, 22 FCC 421; *WBBF, Inc.*, 24 FCC 179 (1958), affirmed 266 F. 2d 922 (1959), *cert.*

have reconsidered the entire matter and are not persuaded to grant use of combination rates during the pendency of the proceeding.

Commissioner H. Rex Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1164

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SUBPART B OF PART 64 OF THE COMMISSION'S RULES AND REGULATIONS GOVERNING DOMESTIC TELEGRAPH SPEED OF SERVICE STUDIES	Docket No. 19777

REPORT AND ORDER

(Adopted November 14, 1973; Released November 20, 1973)

BY THE COMMISSION:

1. On July 9, 1973, the Commission issued Notice of Proposed Rule Making, FCC 73-718, concerning the conduct and reporting of domestic telegraph speed of service studies; Sections 64.201 through 64.295 were revised and new Sections 64.296 through 64.298 were added.

2. The changed Rules appear desirable because of changes in operating methods and service objectives of the Western Union Telegraph Company. The company has recently replaced its multiple reperforator switching centers with a single computer switching complex, many company-operated offices have been converted to agency operation, telephone recording of messages has been consolidated into three centralized telephone bureaus, and former service performance goals have been superseded by delivery standards set forth in its tariffs.

3. The new rules would require Western Union to make service measurements on every 200th full rate message or money order transiting its switching computer, from time of filing to time switched to the destination office, or direct to TELEX or to TWX subscribers over the 24-hour period daily. A monthly summary report will be produced showing volumes handled by time interval, in 15 minute segments. Terminal handling speed of service (telephone, tieline and messenger deliveries) at local offices will be sampled one business day a week using procedures now prescribed in the rules at the 25 largest telegraph centers. Service performance studies at agency offices are also prescribed, and the new Rules provide for telephone speed of answer studies over the 24-hour period at the three centralized telephone bureaus.

4. The Notice was published at 38 Fed. Reg. 18908, July 16, 1973, and interested persons were given the opportunity to file comments on or before August 20, 1973. We have received one such comment, from the Western Union Telegraph Company, which supports the proposed rule changes.

5. Accordingly, for the reasons stated in the Notice of Proposed Rule Making, and by virtue of the authority contained in Sec-

tions 4(i), 201(b), and 218 of the Communications Act of 1934 as amended, revised Rules 64.201 through 64.295 and new Rules 64.296 through 64.298, attached as an appendix to this Order ARE HEREBY ADOPTED, and shall be effective January 1, 1974.

6. It is further ORDERED that also effective January 1, 1974, Section 1.804 of the Rules shall be modified to delete reference to FCC Form 338–B. The section as revised shall read:

1.804 Reports regarding domestic telegraph speed of service.

The Western Union Telegraph Company shall furnish monthly reports under Subpart B of Part 64 of this chapter in regard to speed of service performance at its offices and agencies as prescribed in Section 64.298 and on forms illustrated in that Section, and any additional recurring monthly speed of service reports prepared by the telegraph company, together with copies of related instructions issued by the company to its field offices, in accordance with Part 64 of this chapter.

7. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 64, Subpart B, of Chapter I of Title 47 of the Code of Federal Regulations is revised to read as follows:

Subpart B—Domestic Telegraph Speed of Service Studies

DEFINITIONS

64.202 Filing time.
64.203 Time delivered.
64.204 First attempt.
64.205 Tieline.
64.210 Identifying wire numbers.
64.212 Messenger route.
64.214 Time routed out.
64.215 Time returned.
64.216 Terminal handling speed of service.
64.218 Filing time to computer output speed of service.
64.220 Speed of answer—Central Telephone Bureaus (CTB).
64.221 Agency speed of service.

INSTRUCTIONS FOR THE CONDUCT OF TERMINAL HANDLING SPEED OF SERVICE STUDIES

General Provisions

64.230 Offices and locations to be studied.
64.231 Types of messages to be tallied.
64.232 Exclusion of messages from tally.
64.233 Hours to be included and selection of study date.
64.234 Tallies; when made.
64.235 Suspension of tallying.
64.236 Volume of messages to be tallied.
64.237 Selection of offices for tallying.
64.238 Selection of messages for tallying.

Messages Delivered by Telephone

64.261 Selection and tally.

Messages Delivered by Tieline

64.271 Selection and tally.

Messages Delivered by Messenger

64.281 Route record data.
64.282 Selection and tally.

INSTRUCTIONS FOR THE CONDUCT OF FILING TIME TO COMPUTER OUTPUT SPEED OF SERVICE STUDIES

64.285 Procedures.

INSTRUCTIONS FOR THE CONDUCT OF CENTRAL TELEPHONE BUREAU SPEED OF ANSWER STUDIES

64.288 Procedures.

INSTRUCTIONS FOR THE CONDUCT OF AGENCY SPEED OF SERVICE STUDIES

64.290 Source of data.
64.291 Method of tallying.

GENERAL PROVISIONS

64.297 Company instructions to offices making studies.
64.298 Summary reports.

SUBPART B—DOMESTIC TELEGRAPH SPEED OF SERVICE STUDIES

DEFINITIONS

64.202 Filing time.

The time a message is first accepted at an office for transmission, except as otherwise provided in this section.

(a) In the case of messages filed or corrected over the telephone, the time the transaction with the sender is completed shall be the time filed.

(b) In the case of messages filed over manually terminated teleprinter, TWX or Telex tielines, the filing time shall be the acknowledgment or stamped received time, whichever is earlier. Where messages are filed over a telefax tieline, the filing time shall be the stamped received time placed on the message upon removal from the recorder. Where messages are filed over TWX, Telex or Info-Com directly with the ISCS computer, the filing time shall be the acceptance time placed on the message by the computer. In the case of manually terminated tieline, if the sender is called back to verify a questionable part of the message, the original filing time shall be used unless a correction is made by the sender, in which case a new filing time consisting of the time the correction is received shall be placed on the message.

(c) In the case of messages received in an office by messenger, the time the messenger returns to the office from the pickup run shall be the time filed.

(d) In the case of messages filed at the counter, the time the transaction with the sender is completed shall be the time filed.

64.203 Time delivered.

The time delivery of a telegram is completed to the addressee (or to a person authorized to receive the telegram for the addressee), except as otherwise provided in this section.

(a) For speed of service purposes the first attempt to deliver a telegram shall be considered to be the time of delivery.

(b) When delivery is made by telephone, the time delivered is the time reading of a telegram is completed, or the time the first attempt to deliver is made.

(c) When delivery is made by manual teleprinter tieline (or manually by Telex/TWX) or by tieline switching equipment, the time delivered is the time transmission of a telegram is completed, or the time of the first attempt to deliver.

(d) When delivery is made by telefax tieline, the time delivered or time of first attempt is two minutes later than the time a facsimile transmitter is connected to the customer's line for transmission of the message.

(e) When delivery is made by messenger, the time delivered or the time of the first attempt to deliver for each message on the route shall be the time routed out plus one-half of the interval from the time routed out to the time returned.

(f) In the case of Domestic Full Rate Money Orders, the time delivered shall be the time the money order is paid or the payee is notified.

64.204 First attempt.

(a) In the case of telephone delivery, the time the addressee's telephone is reported to be busy or not answered, or reported out of order, or the addressee or someone authorized to accept the message is not available to receive the message.

(b) In the case of tieline delivery, the time of first attempt is the time transmission is attempted but could not be made because the addressee did not answer or, having answered, requested later transmission. Two minutes later than such time is the time of first attempt for facsimile tieline messages.

(c) In the case of messenger delivery, messages returned to the office undelivered for any reason when first routed out are "first attempts." The time of the first attempt to deliver shall be the time routed out plus one-half of the interval from the time routed out to the time returned.

(d) In all such cases there shall be noted on the message and delivery sheet the "first attempt" time and the reason for non-delivery.

(e) If unsuccessful attempts to deliver by one method result in transfer to another method for delivery, the messages shall not be tallied in the second method, but shall be tallied as a first attempt in the original method in those cases when it is practicable to do so.

(f) Messages delayed in delivery due to special instructions of the sender or addressee shall be excluded from tally as provided in 64.232.

64.205 Tieline.

A direct circuit connecting a telegraph company's office with a customer's office by teleprinter, telefax, TWX, Telex or Info-Com for the purpose of accepting and/or delivering telegrams.

64.210 Identifying wire numbers.

A number assigned to messages sent over each channel each day at office of origin.

64.212 Messenger route.

A continuous trip of a messenger for the physical delivery or pickup of telegrams entered on a Route Call Record.

64.214 Time routed out.

The time a messenger is dispatched on route.

64.215 Time returned.

The time a messenger returns to the office after completing a route.

64.216 Terminal handling speed of service.

The elapsed time from the time transmission is started from the computer to the destination Western Union office until time delivered or first attempt. For purposes of this measurement, messages sent to agents shall be measured to the time transmission to the agent is completed.

64.218 Filing time to computer output speed of service.

The elapsed time from filing time to the time transmission is started to the destination terminal (Western Union office, TWX station or Telex station).

64.220 Speed of answer—Central Telephone Bureaus (CTB).

The elapsed time on an incoming telephone call from the start of ringing at the CTB until the call is answered by a recording operator.

64.221 Agency Speed of Service.

The elapsed time in agency handling on:

(a) Originating messages—from filing time to time transmitted to control office.

(b) Terminating messages—from time transmission to the agent is completed to time routed out for messenger delivery or time telephoned or first attempt.

INSTRUCTIONS FOR THE CONDUCT OF TERMINAL HANDLING SPEED OF SERVICE STUDIES

General Provisions

64.230 Offices and locations to be studied.

The Western Union Telegraph Company shall conduct weekly terminal handling studies, in accordance with the instructions contained herein, in the following cities and locations:

Atlanta, Ga.
Baltimore, Md.
Boston, Mass.
Chicago, Ill.
Cincinnati, Ohio
Cleveland, Ohio
Dallas, Tex.
Denver, Colo.
Detroit, Mich.
Houston, Tex.
Indianapolis, Ind.
Kansas City, Mo.
Los Angeles, Calif.
Miami, Fla.
Minneapolis, Minn.
New Orleans, La.
New York, N.Y.
(All Public Message Centers)
Philadelphia, Pa.
Portland, Ore.
San Francisco, Calif.
St. Louis, Mo.
Washington, D.C.
Central Tel. Bureaus
Moorestown, N.J.
Bridgeton, Mo.
Reno, Nev.
(Telephone dlys only)

64.231 Types of messages to be tallied.

Of the messages selected as hereinafter provided, the following shall be tallied by time intervals on speed of service tally sheets: Domestic Full Rate including Government and CAK, Domestic Full Rate Money Order, CND and Full Rate International (INTL). (For purposes of this instruction, "Domestic" shall include messages originating in Canada and Mexico as well as other "domestic" points outside the United States.

64.232 Exclusion of messages from tally.

Messages other than those specified in 64.231 shall not be tallied. These messages include among others: Service, Wire, Press, Personal Opinion Messages (POM), Overnight Telegrams, Deadhead, confirmation copies of messages previously delivered, messages delayed in delivery due to special instructions of the sender or addressee, and messages delayed due to closed hours of the addressee.

64.233 Hours to be included and selection of study date.

Speed of service studies shall be made on messages received at delivery office between the hours of 9 A.M. and 6 P.M. local time, on one designated business day each week, except as provided in 64.235 and 64.282. The day to be designated each week, for each of the listed offices in 64.230, shall be selected at a central point, from a random number table, and the date so determined shall not be communicated to the office involved prior to 4 P.M. local time at that office on the designated date.

64.234 Tallies; when made.

Speed of service tallies shall be made after 7:00 P.M. of the day of transmission but not later than the day following transmission, except any tally thus scheduled to be made on a holiday or a Saturday may be postponed until the following business day.

64.235 Suspension of tallying.

(a) Speed of service tallies shall not be taken with respect to messages handled on the following holidays: New Year's, Washington's Birthday, Valentine's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas; and on the last business day preceding each of these holidays.

(b) In the event of a serious and unusual communication emergency such as that caused by flood, earthquake, strike by respondent's employees, or fire, tallying may be suspended at the offices affected by such emergency. In the event of suspension of tallies during an emergency, messages handled during the emergency need not be tallied.

64.236 Volume of messages to be tallied.

At each city studied (in New York City, each PMC), there shall be sampled for each method of delivery (telephone, tieline and messenger) not less than 50 messages in each delivery method (or all available messages).

64.237 Selection of offices for tallying.

(a) Sampling for terminal handling speed of service in each method shall be limited to those offices in each city which deliver an average of 50 or more messages daily by telephone, tieline or messenger; provided, however, that if none of the offices in a city deliver 50 or more messages daily in a particular method of delivery, then each such office shall be considered as delivering an average of 50 messages per day in that method and as qualifying under this section for tallying.

(b) The volume to be sampled at each office shall be determined as follows:

(1) Where there are no branch offices in a city, the entire sample of 50 messages (or all available messages) in each delivery method shall be taken at the main office.

(2) Where there are one or more delivery branches in a city, the sample of 50 messages in each delivery method shall be divided between the main office and any branches delivering by that method in the proportion that each office load bears to the total delivered load in that method.

(3) The sample of 50 messages in the tieline method shall be divided between teleprinter (including TWX and Telex) and telefax in the ratio of the respective total city loads in these methods.

64.238 Selection of messages for tallying.

(a) The selection of individual messages to be tallied from the delivered message file of any method at any office shall be determined from the identifying wire number, as follows:

(1) A set of ten cards shall be prepared, each card bearing one of the digits 0 to 9;

(2) The ten cards shall be thoroughly shuffled face down followed by a cut of the deck. The digit appearing on the top card after completion of the cut shall determine selection of the messages to be tallied. Messages in the files of the types named in 64.231, received at delivery office between 9 A.M. and 6 P.M., local time, on which the identifying wire number ends in the digit selected shall be withdrawn for tallying until the quota for the day has been obtained.

(b) Offices shall select individual messages from the files for each method in the following manner:

(1) Where delivered messages are filed alphabetically, a card for each letter of the alphabet shall be prepared. The set of cards shall be shuffled face down and the deck cut. The top card shall be drawn after completion of the cut. The file shall be searched beginning with the letter of the alphabet drawn for individual messages of the types named in 64.231 whose identifying wire number ends in the digit drawn. If, after complete search of the file for messages received at delivery office between 9 A.M. and 6 P.M., local time, the quota for tallying is not obtained, the succeeding alphabet card or cards shall be drawn and used in the order of their appearance in the pack from the top down.

(2) Where delivered messages are filed in sent number sequence or in delivered time order or route records are filed in route out or return time order, a set of 9 cards shall be prepared, each card bearing one of the hours 9 A.M. to 10 A.M. through 5 P.M. to 6 P.M. The set of cards shall be shuffled face down and the deck cut. The top card shall be drawn after completion of the cut. The file shall be searched beginning with the hour drawn for individual messages whose identifying wire number ends in the digit drawn. If after complete search of the file for messages of the types named in 64.231 received at delivery office between 9 A.M. and 6 P.M., local time, the quota for tallying is not obtained, another digit shall be selected in accordance with 64.238(a)(2).

Messages Delivered by Telephone

64.261 Selection and tally.

(a) Offices and messages selected for tallying in any city shall be determined in accordance with 64.236 to 64.238.

(b) Each selected message of the type described in 64.231 which was received at delivery office between the hours of 9 A.M. and 6 P.M., local time, shall be tallied.

(c) The interval of time to be tallied for each message selected shall be from the computer output time to the time delivered or time of the first attempt.

Messages Delivered by Tieline

64.271 Selection and tally.

(a) For messages delivered by telefax and manual teleprinter, TWX or Telex, offices and messages for tallying in any city shall be determined in accordance with 64.236 to 64.238.

(b) For messages delivered by tieline switching equipment, the following method for selection of messages to be tallied shall be used:

(1) Each roll of monitor tape, on which are recorded copies of messages delivered by tieline switching equipment shall be designated with a separate number;

(2) A number card shall be prepared for each numbered roll of monitor tape. The entire set of cards, representing an equal number of monitor rolls, shall be thoroughly shuffled face down daily and the deck cut. The required number of cards shall be withdrawn from the top of the deck after completion of the cut to determine the monitor roll or rolls from which tallies will be made. These cards shall be withdrawn and used in the order of their appearance in the pack from the top down;

(3) A digit shall be selected, as outlined in 64.238(a);

(4) Each message of the types named in 64.231 in the selected monitor tape rolls received at delivery office between 9 A.M. and 6 P.M., local time, on which the identifying wire number ends in the digit selected shall be tallied, until the quota is obtained.

(c) The interval of time to be tallied for each message selected shall be from the computer output time to the time delivered or time of the first attempt.

Messages Delivered by Messenger

64.281 Route record data.

At all offices in the cities enumerated in 64.230 where tallies are required to be made, the following shall be entered on route records: (a) The identifying wire number of each message; (b) the computer output time for each message of the types named in 64.231 except for confirmation copies of messages previously delivered; (c) the time a messenger is dispatched on each route carrying messages; and (d) the time of return from the route.

64.282 Selection and tally.

(a) Offices and messages selected for tallying in any city shall be determined in accordance with 64.236 through 64.238.

(b) Each message of the type described in 64.231 which was received at delivery office between the hours of 9 A.M. and 6 P.M., local time, shall be tallied, except that messages delivered by telephone and subsequently dispatched for physical delivery by messenger need not be tallied.

(c) The interval of time to be tallied for each message selected shall be from the computer output time to the time delivered or to the time of the first attempt (see 64.203 and 64.204).

INSTRUCTIONS FOR THE CONDUCT OF FILING TIME TO COMPUTER OUTPUT SPEED OF SERVICE STUDIES

64.285 Procedures.

Continuous studies shall be made of the elapsed time from filing time to computer output time on full-rate and money order traffic transiting the computer. The monthly report of sampled traffic will be based upon every 200th full rate message or money order transiting the computer and will include messages which originate as Teleprinter Computer Service (TCS) inputs by Telex, TWX and Info-Com customers as well as those originating at Western Union offices.

INSTRUCTIONS FOR THE CONDUCT OF CENTRAL TELEPHONE BUREAU SPEED OF ANSWER STUDIES

64.288 Procedures.

Continuous studies will be made of the speed of answer at the three Central Telephone Bureaus, Moorestown, New Jersey, Bridgeton, Missouri and Reno, Nevada. Monthly reports shall be made for each of the bureaus showing the percentage of calls answered within 20 seconds and also the percentage of calls answered within 50 seconds.

INSTRUCTIONS FOR THE CONDUCT OF AGENCY SPEED OF SERVICE STUDIES

64.290 Source of data.

Agency speed of service studies shall be prepared from summary data contained in Western Union's Agency Inspection Guide List, Form WU 16, for Class 9–C and Class 11–B agencies, which forms shall be collected and maintained at the Company's Washington, D.C. headquarters.

64.291 Method of tallying.

(a) As inspection forms are received during the month to be studied, such forms shall be sorted and filed in:

(1) chronological order of inspection date, and

(2) administrative area order.

(b) At the close of the study month the forms shall be held in a separate file from those received in the ensuing month for speed of service sampling.

(c) The forms for each administrative area shall be studied on a random sampling basis as follows:

(1) The number of forms for each area under study shall be determined;

(2) Based upon the number of forms received for each area, the number of forms to be sampled shall be determined from the following incremental sampling table:

Number of forms in given area (population)	Sample size	Sample selection
20 or less	all items	all items.
21–25	17	random number table.
26–30	19	random number table.
31–35	23	random number table.
36–40	25	random number table.
41–45	27	random number table.
46–50	30	random number table.
51–60	33	random number table.
61–75	37	approximately 1 of 2, random start.
76–100	42	approximately 1 of 2, random start.
101–150	49	approx. every 3rd item, random start.
151–200	54	approx. every 4th item, random start.
201–250	57	approx. every 5th item, random start.
251–300	59	approx. every 6th item, random start.
301–500	64	approx. every 9th item, random start.
501–750	67	approx. every 10th item, random start.
751–1000	69	approx. every 15th item, random start.

(3) The sampling process will begin and proceed based upon selection from a random number table.

(4) The speed of service data from each inspection form selected shall be tallied on the prescribed form, using a separate form or series of forms for each administrative area.

(d) Each form shall be summarized in the lower portion of the prescribed form, utilizing the last page of a series for the purpose.

(e) The study and summary forms shall be submitted to the Commission in "work paper" form upon completion of the studies for all administrative areas.

GENERAL PROVISIONS

64.297 Company instructions to offices making studies.

Two copies of all general instructions (and of any amendments thereto) issued to field offices for the purpose of complying with 1.804 of this chapter and 64.201 to 64.298 shall be filed with the commission upon issuance.

64.298 Summary reports.

The following reports shall be submitted monthly in quadruplicate, on designated forms, no later than the 25th of the month following the month under report:

(a) The results of the studies of terminal handling speed of service at the cities and installations indicated in 64.230.

(b) The results of the computer analysis of filing time to computer output speed of service as described in 64.285.

(c) The results of speed of answer studies at the three Central Telephone Bureaus, as described in 64.288.

(d) The results of agency speed of service studies as described in 64.291.

Monthly Summary of Agency Speed of Service

The Western Union Telegraph Company

Area _____ Month _____

City	Delivery [1]		Originating [2]	
	Number of messages		Number of messages	
	Tallied	Within 60 minutes	Tallied	Within 30 minutes
Total				

[1] Elapsed time from time received to time dispatched or telephoned.
[2] Elapsed time from time filed to time of transmission.

SUMMARY

Delivery		Originating	
Total agencies sampled		Total agencies sampled	
Total messages tallied		Total messages tallied	
Total messages within 60 mins		Total messages within 30 mins	
Performance percentage		Performance percentage	

Monthly Speed of Service Summary (Filing Time to Compute Output Time)

The Western Union Telegraph Company

_____
Month

Time in minutes	Number of full rate messages sampled	Cumulative percent switched
00-15		
15-30		
30-45		
45-60		
60-75		
75-90		
90-105		
105-120		
120-135		
135+		

Monthly Summary of Telephone Speed of Answer (Central Telephone Bureaus)

THE WESTERN UNION TELEGRAPH COMPANY

_____
Month

Days of week	Bridgeton, Mo.			Moorestown, N.J.			Reno, Nev.		
	Volume	Pct. Ans.		Volume	Pct. Ans.		Volume	Pct. Ans.	
		20 sec.	50 sec.		20 sec.	50 sec.		20 sec.	50 sec.
Sundays									
Mondays									
Tuesdays									
Wednesdays									
Thursdays									
Fridays									
Saturdays									

Monthly Summary of Terminal Handling Speed of Service (Computer Output Time to Time Delivered)

THE WESTERN UNION TELEGRAPH COMPANY

Month

Location	Telephone deliveries		Tieline deliveries		Messenger deliveries	
	Number messages	Average speed (mins)	Number messages	Average speed (mins)	Number messages	Average speed (mins)
Central telephone burs						
Bridgeton						
Moorestown						
Reno						
Atlanta						
Baltimore						
Boston						
Chicago						
Cincinnati						
Cleveland						
Dallas						
Denver						
Detroit						
Houston						
Indianapolis						
Kansas City						
Los Angeles						
Miami						
Minneapolis						
New Orleans						
New York						
PMC 1						
PMC 2						
PMC 3						
PMC 4						
PMC 5						
PMC 6						
PMC 7						
Philadelphia						
Portland						
San Francisco						
St. Louis						
Washington, DC						

F.C.C. 73-1144

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. M. PATTON ECHOLS, JR.
against
RADIO STATION WMAL, WASHINGTON, D.C.

ORDER

(Adopted October 31, 1973; Released November 5, 1973)

BY THE COMMISSION: CHAIRMAN BURCH CONCURRING AND ISSUING A STATEMENT IN WHICH COMMISSIONERS REID AND WILEY JOIN; COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT.

1. The Commission has before it an Application for Review of the Broadcast Bureau's ruling of October 16, 1973, filed October 25, 1973 by Mr. M. Patton Echols, Jr.

2. Pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Secretary.*

CONCURRING STATEMENT BY CHAIRMAN BURCH IN WHICH COMMISSIONERS REID AND WILEY JOIN

There is no question but that law and precedent compel the denial of Mr. Echols' petition. What *is* in question is whether the law and precedent at issue here make sense or serve any reasonable purpose in the circumstances of this case. In my judgment, they do not.

Clearly, Section 315 applies only to the "use" of a broadcast station by the legally qualified candidate himself. (*Felix* v. *Westinghouse Radio Stations*, 186 F. 2d 1 (3d Cir. 1950), *cert. denied* 341 U.S. 990 (1951); *Use of Broadcast Facilities by Candidates for Public Office* (1970 FCC Section 315 Primer), 35 Fed. Reg. at 13050 (III. A. 1)) To come within the "no censorship" provision, the candidate must appear and be "integrally involved in the program". (*In the Matter of Gray Communications System, Inc.*, 19 FCC 2d 532, 534 (1969); see *Primer, supra*, at 13063-64 (VII. 4 and 9)) Furthermore, when Congress considered the term "use" and amended the section in 1959, it was quite aware of the Court and FCC holdings already referred to. (See, e.g., H. Rept. No. 802, 86th Cong., 1st Sess., at 23.) And, in 1971, when Congress enacted the Federal Election Campaign Act, it used the same term with obvious intent to continue its well-established meaning. (See, e.g., H. Rept. No. 92-565, 92nd Cong., 1st Sess., at 9: ". . . Thus there would have to be a use by the candidate through personal participation, i.e., use of his voice or image whether

live or taped, including films and pictures . . .") It is simply too late in the day to suggest that Section 315 does not mean what it says.

The law is perfectly clear. Just as clearly, however, its application to the situation before us does not serve (in the words of the Supreme Court) ". . . the basic purpose for which Section 315 was passed—full and unrestricted discussion of political issues by legally qualified candidates". As the Court stressed, ". . . the thrust of Section 315 is to facilitate political debate over radio and television" and to insure that ". . . candidates when broadcasting not be hampered by censorship of the issues they could discuss". (*Farmers Educational and Cooperative Union* v. *WDAY, Inc.*, 360 U.S. 525, 529, 534 (1959))

To be sure, the clear intent of 315 could have been satisfied by so simple an expedient as the candidate appearing briefly to introduce or close the very same 30-second political spot: it would then have been exempt from station censorship. This, in my view, is the elevation to the point of absurdity of form over substance—and, even assuming that all candidates and their managers pay careful attention to the Federal Register and FCC Notices, it has the effect of imposing arbitrary rules on the legitimate decisions of political strategists (and possibly forcing material already "in the can" to be scrapped or reworked).

Even worse, serious discrepancies in the construction of "use" have arisen under the 1971 Act. One and the same political advertisement may fall (a) *outside* the protections of 315, (b) *within* the category of being chargeable against the candidate's spending limit, and (c) *outside* the category of "lowest unit charge"—all because the candidate does not himself appear. Some broadcasters apparently concluded during the 1972 political campaign that it was ridiculous to force candidates to doctor their ads, simply as a way of avoiding such inequities—and they engaged in some informal legislative draftsmanship on their own hook. But many did not.

The remedy is obvious. As this Commission recommended to the Congress on March 8, 1973—in the course of hearings before the Senate Communications Subcommittee—amending Section 315(b) would repair the damage. This could be done simply by adding the words "or on behalf of" after the definition of "use" of broadcast facilities *by* legally qualified candidates.[1]

So much for the long run. In the short, however, we are forced to rely on the reasonable judgment of broadcast licensees—and, although I personally believe that WMAL's judgment in the present case might well be questioned and that the station would have been better advised to let the ad run as prepared, certainly the *reasonableness* of this judgment cannot be faulted. There is nothing to be gained by the Commission's intervention to engage in second-guessing. What I am suggesting for the long run is a legislative remedy that will have the effect of reducing the occasion for second-guessing the *candidate's* judgment, whether by licensee *or* Commission.

[1] It is pertinent to observe that, as I read it, the November 14, 1973 decision by the U.S. District Court for D.C.—*ACLU, Inc.* v. *W. Pat Jennings*—is readily distinguishable from the fact situation before us. There, the Court held certain provisions of Title I of the Federal Election Campaign Act unconstitutional on their face, and narrowed the scope of Title III. Here, there is no dispute but that the ad was intended to support Mr. Echols' candidacy, nor is there any question about its "certification". The imperfections in the Act noted by the Court are, of course, subject to legislative remedy, as are the ambiguities discussed above.

F.C.C. 73-1223

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
FAIRCHILD KLIF, INC., GERMANTOWN, MD.
For Ruling Concerning Combination Rates

NOVEMBER 21, 1973.

FAIRCHILD KLIF, INC.,
Radio Station KLIF, Sherman Fairchild Technical Center, Germantown, Md. 20767

GENTLEMEN: This is with reference to your letter of August 6, 1973, in response to the Commission's letter dated July 18, 1973, concerning your offering of advertising rates in combination with Station KFJZ.

As you will recall, the Commission concluded that KLIF and KFJZ were operating in violation of the 1963 policy prohibiting separately owned stations serving substantially the same area from using combination rates. You were requested to state what action you had taken or proposed to take to discontinue the practice.

In reply you state that you were advised by the attorney for KFJZ that it intended to request authority to continue offering combination rates. You state that although you will not be a party to the request, you propose that you be permitted to continue to use combination rates pending a final decision on the request by KFJZ and that thereafter to continue or discontinue such offer and sale in accordance with the Commission's decision.

We have considered the letter of August 17, 1973, submitted by the licensee of Station KFJZ proposing to continue use of combination rates, and we have this day issued a letter to Station KFJZ in which we conclude that the practice is in violation of our policy. A copy of the letter to KFJZ is enclosed. You will note that the licensee of KFJZ is requested to submit a proposal for discontinuance of the practice. It is requested that you also inform the Commission within twenty days of your proposal to discontinue combination rates, which in any event shall not exceed six months from the date your proposal is submitted.

Commissioner H. Rex Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1177

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
FETZER CABLEVISION, KALAMAZOO, MICH.
For Special Temporary Authority

NOVEMBER 14, 1973.

EARL R. STANLEY, ESQ.,
Dow, Lohnes & Albertson,
1225 Connecticut Avenue NW.,
Washington, D.C. 20036

DEAR MR. STANLEY: On December 20, 1972, you filed a letter, on behalf of Fetzer CableVision, operator of cable television systems at Kalamazoo, Kalamazoo Township, Oshtemo, Cooper Township, Comstock, Parchment, and Portage, Michigan, which seeks special temporary authorization to commence carriage of noncommercial educational Station WGVC, Grand Rapids, Michigan, on these cable television systems until action can be taken on its pending applications for Certificates of Compliance (CAC 266-272). This request is unopposed.

In support of your request, you state that: (a) WGVC commenced operations on December 17, 1972; (b) that WGVC has requested carriage on these cable television systems; (c) that the above-noted cable television systems are located in the Kalamazoo-Grand Rapids-Battle Creek-Muskegon television market (the 37th largest television market); (d) that WGVC is licensed to Grand Rapids, Michigan, and its carriage is therefore required by Section 76.61(a)(4) of the Rules.

In these circumstances, Section 76.11 of the Commission's Rules is waived to allow immediate carriage of Station WGVC by the above-listed cable television systems operated by Fetzer CableVision. This authorization will expire fifteen (15) days after final Commission action on the pending applications for Certificates of Compliance. Of course, this action does not affect our eventual disposition of Fetzer CableVision's pending applications for Certificates of Compliance which are opposed and involve the proposed carriage of WZZM-TV, Grand Rapids, Michigan on these cable television systems.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1222

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice to
FIRST ILLINOIS CABLE TV, INC., FORT WORTH, TEX.
Concerning Combination Rates

NOVEMBER 21, 1973.

FIRST ILLINOIS CABLE TV, INC.,
Radio Station KFJZ,
4801 West Freeway,
Fort Worth, Tex. 76107

GENTLEMEN: This is with reference to the Commission's letter of July 18, 1973, and your response dated August 17, 1973, concerning the offering of combination advertising rates to advertisers.

As you will recall, the Commission stated that as long ago as 1963 it had been apprised of the fact that you and the licensee of Station KLIF, Dallas, Texas, had been offering combination advertising rates, and that it appeared you were continuing to do so. Upon present consideration of the circumstances in the case, the Commission concluded that such a practice was in violation of its policy set forth in the Public Notice adopted January 30, 1963, in which it stated that combination rate agreements or practices by independent stations serving the same area raise serious questions under the policies underlying the anti-trust laws (15 U.S.C. 1), conflict with established Commission policy, and are contrary to the public interest. In reaching this conclusion, the Commission found that KFJZ and KLIF served the same area because KLIF placed a signal of 3mV/m over Fort Worth at night and a signal of 40 mV/m over Fort Worth during daytime, and KFJZ placed a 4 mV/m signal over Dallas both day and night. Thus pursuant to Section 73.182(f) [1] of the Rules, Station KLIF rendered primary service to Fort Worth during daytime hours, and rendered primary service to Fort Worth residential areas at night. Station KFJZ rendered primary service to Dallas residential areas both day and night. You were requested to state what action you had taken or proposed to take to sever the relationship.

In reply, you state that it is your "understanding that the KFJZ–KLIF combination rate agreement was initiated sometime in the late 1950s," and you describe the practice as follows:

> The KFJZ–KLIF combination rates are extended only to national advertisers, and only on an optional basis. There is no "must-buy" requirement. KFJZ receives about 33% of revenues resulting from combination sales. Currently Station

[1] Section 73.182(f) of the Rules provides that the signal necessary to render primary service to city business or factory areas is 10 to 50 mV/m, and the signal necessary for primary service to city residential areas is 2 to 10 mV/m.

KLIF has many national accounts which are not buying KFJZ. It is generally the case that KFJZ is bought as an "add-on" to the KLIF schedule. Most time buyers think Dallas—not Fort Worth—and it generally is only due to the efforts of KFJZ's sales management and representatives that the station is added to the KLIF buy.

You contend that the Commission's 1963 statement holding that combination rate agreements between independent stations serving substantially the same area are contrary to the public interest was predicated essentially upon its determination that inherent in such agreements is the element of price fixing by independent parties who should be competing with one another, and you assert that Station KFJZ does not compete with KLIF—or any other Dallas station—in the Dallas metropolitan area for either advertising revenues or listeners. Further you contend that the practice of offering advertising rates to national advertisers in combination with KLIF (on an optional basis) does not contravene the 1963 statement of policy and "indeed affirmatively serves the public interest by furthering competition between broadcast stations operating in Fort Worth and Dallas markets." You state that because of the dominance of certain stations operating in the Fort Worth and Dallas markets and the relationship of the markets to each other that Station KFJZ, as well as the overwhelming majority of other Fort Worth stations, are unable effectively to compete on their own for meaningful national business, and that combination rate arrangements between Fort Worth and Dallas stations promote competition in the markets by lessening the geographic and demographic disadvantages confronted by the Fort Worth stations.

You state that it is your opinion that notwithstanding the signal coverage of the City of Dallas, "Station KFJZ does not serve the City or the Dallas market and that the station accordingly does not serve substantially the same area as does Station KLIF." You concede that KFJZ places a 4 mV/m signal over Dallas both day and night, but state:

However, it should be pointed out that the Dallas metro area includes a population of 1,631,800, with 759,000 of these persons residing *outside* the city of Dallas (figures according to February, 1973 SRDS). The KFJZ contour map shows clearly that our station places only a 2 mv/m signal over all of Dallas County and between 0.5 mv/m and 2 mv/m over most of the remaining five counties, which contain a population almost equal to the total current Fort Worth metro area (794,800) and far greater than Fort Worth's current population of some 399,800.

Further, you state that Station KLIF does not provide primary nighttime service to the entire area of any of the five counties which comprise the Fort Worth segment of the Dallas-Fort Worth SMSA, and that KLIF fails to provide primary nighttime service to any portion of Wise and Hood Counties.

You explain that although only thirty miles separate the center of Fort Worth from that of Dallas, the cities are "world's apart in many respects," and that Fort Worth is referred to as "Cowtown" while Dallas is rivaled only by Houston as the financial, fashion, transportation, industrial and insurance center of the Southwest. You contend that residents of Fort Worth are interested basically in their own local affairs and not the affairs of Dallas, and that Dallas resi-

dents are interested in Dallas affairs. In support of this conclusion, you submit circulation figures for Dallas and Fort Worth newspapers which indicate that almost all of the Fort Worth newspapers are sold in the Fort Worth city zone and the vast majority of the Dallas newspapers are sold in the Dallas city zone.

You state that the size of the market, the distance between Fort Worth and Dallas, and the separate and distinct needs and interests of the cities compel most stations in the area to concentrate on service to their cities of license, and that Radio Station KFJZ has done precisely this. You explain that the news department personnel have daily assignments to cover the Fort Worth City Hall, the County Courthouse, the Police Department, and the Sheriff's Department; that the special assignments covered on a regular basis include the Fort Worth School Board, Federal offices and more than a dozen other local agencies in addition to agencies in the Mid-Cities; that one roving or "mobile" reporter is available for spot or fast breaking news, but that no such assignments are made in Dallas. Also you state that KFJZ provides frequent traffic reports on major thoroughfares of Fort Worth, but not for the Dallas arteries.

You argue that circulation figures compiled by rating services show that KFJZ does not compete with KLIF for an audience in Dallas. You attach Pulse reports for its two rating periods in 1972 and state that they reveal that KFJZ achieves high ratings in the Fort Worth Central Zone but its share of the audience in the Dallas Central Zone is merely 1 per cent. You state that ARB reports also demonstrate that KFJZ does not attract a meaningful segment of the Dallas audience.

You also state as follows:

> As the Commission well knows, audience ratings are the predominant factor in determining which stations will receive national advertising business. When the Dallas-Forth Worth market was recently redefined, the two major radio rating services—ARB and Pulse—stated their intention to survey the area as a single entity. This plan encountered strong opposition from AM stations in both Fort Worth and Dallas simply because most stations recognize that they are unable to serve the totality of the Dallas-Forth Worth metroplex. The stations wanted the report to show where the listeners are. Virtually all Fort Worth AM stations suffer drastically unless the market is split for rating purposes for the reason that the Fort Worth market represents less than one-third of the total area and the ratings for local stations would accordingly be diluted substantially.
>
> The rating services have agreed to continue issuing separate reports to the two cities confirming what most area AM stations believe—the markets are distinctly different. However, in addition to the separate rankings for Dallas and Fort Worth, all subsequent tabulations will also include a listing which combines the audience figures to reflect totals for the entire Dallas-Fort Worth SMSA. This practice could well have the effect of negating any benefits to flow to the Fort Worth stations from the separate market rankings as sales representatives of the top stations in the combined rankings will understandably not show the separate market breakouts to national buyers.

You contend that it is only through your combination rate arrangement with Station KLIF that you are able to compete with the dominant stations so as to attract meaningful national business, and that combination rate agreements between Fort Worth and Dallas stations should be permitted in order for Fort Worth stations to have a reasonable opportunity to secure national business. You attach a letter

from the licensee of KJIM, Forth Worth in support of your contention.

You argue that the Commission could not reasonably have reached the conclusion that Stations KFJZ and KLIF serve substantially the same area when the Commission itself has conceded that it is without a standard for defining "substantially the same area" since in the Commission's Notice of Inquiry and Notice of Proposed Rule Making in Docket 19789, comments were invited as to this matter. You argue further that the Commission should not order KFJZ and KLIF to sever this arrangement on the sole basis of service contours, that it is not improbable that the final rules will make provision for grandfather rights and/or the grant of waivers in appropriate cases, and that in any event, the Commission's ultimate findings and conclusions in the rule making proceeding will control combination rate practices. In conclusion, you state that you do not presently propose to take any action to sever the combination rate arrangement with station KLIF.

In summary, you argue that the Commission's policy that combination rate agreements between independent stations serving the same area are contrary to the public interest is predicated essentially upon the Commission's determination that inherent in such agreements is the element of price fixing by independent parties who should be competing, and you claim that KFJZ does not compete with KLIF or any other Dallas station.

The Commission's policy is aimed at price fixing by independent parties who should be competing with one another. Further we stated that combination rate practices are in flagrant conflict with the basic policy of promoting "arms length competition" among broadcast stations and that:

> We wish to make clear that our ruling is not designed solely to insure that the public, including advertising members of the public, find the field of broadcasting to be one of open and fair competition. The broadcast station in this area is also entitled to face broadcast competitors—not combinations. Otherwise, the station not participating in such combination rate arrangements might lose substantial revenues because of these improper arrangements—to the possible detriment of its overall operation and its service to the public in its area.

You assert that the combination rate practice with KLIF does not conflict with the Commission's policy and that the practice enhances competition by lessening geographic and demographic disadvantages confronting you and other Fort Worth stations. Although you contend that the practice enhances competition, it results in a combination against which other stations in your area must compete. As is evident from the above-mentioned policy, such combination is in flagrant conflict with the basic policy of promoting "arms length competition."

Also you argue that notwithstanding the signal coverage of Dallas, KFJZ does not serve the city or the Dallas market and accordingly does not serve substantially the same area as does Station KLIF. You mention that although KFJZ places a 4 mv/m signal over Dallas, the signal in the surrounding counties containing a large population is less, that the characteristics of the cities are different, and that most stations in the area concentrate on serving the cities to which they are licensed. You contend that the Commission could not have reached a conclusion that KFJZ and KLIF serve the same area since in the Commission's inquiry comments have been requested regarding the

matter. In fact, there was no oversight on our part in issuing our letter of July 18, 1973, at the same time that we requested comments regarding the standard to be used in defining service to "substantially the same market or area." We chose to take the two separate actions because we felt that the overlap situation regarding KLIF and KFJZ was so clearly violative of our policies that it was not to be considered a part of the inquiry. Our concern in this area of our inquiry is primarily with respect to situations in which the degree of overlap is questionable.

We recognize that due to the extensive period of time during which you have used combination rates that agreements may have been made extending into the future. Accordingly, although we conclude that use of combination rates by KFJZ and KLIF should be discontinued, you are requested within 20 days of the date of this letter to submit a proposal for discontinuance of the practice, which in any event shall not exceed six months from the date your proposal is submitted.

Commissioner H. Rex Lee absent.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1251

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (LEBANON, MO.; POTEAU, OKLA.; AND GULFPORT, MISS.)	Docket No. 19737 RM-1937 RM-1952 RM-1957

REPORT AND ORDER

(Adopted November 28, 1973; Released December 3, 1973)

BY THE COMMISSION:

1. The Commission here considers the three unrelated FM assignment proposals upon which Notice of Proposed Rule Making was released herein on May 14, 1973 (FCC 73-491, 38 Fed. Reg. 13029), in response to petitions. The petitioners and the FM assignments they seek are as follows:

RM-1937—Channel 221A to Lebanon, Missouri (Lebanon Broadcasting Company)
RM-1952—Channel 250 to Poteau, Oklahoma, in place of Channel 252A at Poteau (LeFlore County Broadcasting Company)
RM-1957—Channel 244A to Gulfport, Mississippi (Don Partridge and Houston L. Pearce)

In discussing these proposals individually below, all population information is from the 1970 U.S. Census Reports unless otherwise indicated.

RM-1937, Lebanon, Mo.

2. Channel 221A is proposed for a second FM assignment to Lebanon (population, 8,616), the largest community and seat of Laclede County (population 19,944) by Lebanon Broadcasting Company, licensee of Station KLWT, a Class IV AM broadcast station at Lebanon. The only FM assignment at Lebanon and in Laclede County at present, Class C Channel 279, is occupied by Station KJEL-FM, authorized to Risner Broadcasting, Inc. (Risner). Risner is also permittee of Station KJEL, a daytime-only AM broadcast station, the only other AM station at Lebanon and in Laclede County.[1] Supporting comments and

[1] The Risner FM and AM stations at Lebanon, for which construction permits have been outstanding since December 27, 1971, have only recently commenced operation under program test authority, granted October 1 and 2, 1973, respectively. Lebanon Broadcasting initially was also a competing applicant for the Lebanon Class C Channel 279 assignment, and its application and that of Risner's for the channel were designated for comparative hearing in 1967 (10 F.C.C. 2d 936). Subsequently, however, the Lebanon Broadcasting application was, at its request, dismissed on January 31, 1968, with prejudice. Before these competing applications were designated for hearing, Lebanon Broadcasting in 1966 also requested rule making on the proposed assignment of a second Class C FM channel to Lebanon in order to eliminate the need for comparative hearing on the competing applications for Channel 279 at Lebanon. Its request was denied because we did not believe that Lebanon was of a size to merit two wide-coverage Class C assignments and because its proposal would have precluded FM assignments to communities lacking assignments in other areas and, in some cases, without other opportunity for an available FM assignment (FCC 66-1033, 8 Pike & Fischer R.R. 2d 1625 (1966)). On reconsideration, its request was again denied (8 Pike & Fischer R.R. 2d 1719).

reply comments received from Lebanon Broadcasting on the proposal affirm its intention to apply for the requested FM channel immediately upon its assignment to Lebanon and, if authorized, to proceed expeditiously to construct and place a new station in operation. Opposing comments and reply comments on the proposal were filed by Risner, who also opposed rule making on it.

3. A community the size of Lebanon would not normally qualify for a second FM assignment or, since it has a Class C assignment, for a Class A assignment under our FM assignment guidelines. These guidelines are not so rigidly applied, however, as to foreclose an assignment which would be more compatible with the public interest and our objectives for a fair, efficient, and equitable distribution of the available FM channels throughout the country. Having now considered the Channel 221A proposal for Lebanon further in light of all the comments directed to it by the proponent and opponent, we are persuaded that, in the circumstances presented, this is an appropriate case for not applying the guidelines to block opportunity for Lebanon to have a second local FM outlet and that the requested assignment is warranted.

4. The original comments of Lebanon Broadcasting convincingly argued that the proposed Channel 221A assignment to Lebanon would serve a need and demand there and in Laclede County for a choice of locally-oriented FM service and an improved second nighttime aural broadcast service. Its showing indicated that a Lebanon Channel 221A station would be able to serve an area of 642 square miles, containing 19,218 people, and to provide nighttime service to Lebanon and 90.5 percent of the residents of Laclede County, and that this would be significantly more nighttime service than its Class IV AM station is able to provide in the county. It further indicated that, while there is no available Class C channel which could be assigned to Lebanon without changing existing assignments, the proposed Channel 221A assignment would be technically feasible and require no other changes in assignments. The preclusionary effect of the proposed Lebanon Class A assignment on future assignments elsewhere also appeared unobjectionable since, in the areas where future assignments would be foreclosed on Channels 218, 219, 220 and 221A, it was shown that other available FM channels could be assigned to meet any developing needs of the relatively small communities in those areas. With respect to intermixing Class A and C assignments at Lebanon, Lebanon Broadcasting persuasively urged that, notwithstanding the technical competitive advantage the local Class C station has for wide-area coverage over a Class A station, the proposed Class A assignment to Lebanon should be made since no available Class C channel can be assigned; it is willing to invest its money to build a station to operate on the requested Class A assignment since, in light of the improved nighttime service it could provide to Laclede County, it believes it can be operated to compete effectively with the local Class C station; and the public stands to benefit from having a choice of local FM service and an improved nighttime aural broadcast service. Risner's opposition to rule making on the proposal was based on claims that there is no need or support for a second FM station at Lebanon and that preclusion considerations, as well as the Commission's assignment policies

against the assignment of two FM channels to communities of this size and the intermixture of different classes of assignments in the same community, dictate denial of the request and proposal. The Risner showing in support of its claims, however, was insufficient to be persuasive.

5. Risner's further showing in the opposing comments it filed herein on the proposal also contains nothing of substance which is persuasive. It again argues that our rationale in denying Lebanon Broadcasting's previous request for rule making in 1966 on a proposal to assign a second Class C channel to Lebanon should be controlling in this case. We disagree. The assignment of even one Class C channel to a community the size of Lebanon is an exception to our general policy of assigning wide-coverage Class B or C channels to the large cities and metropolitan areas and Class A channels to the smaller communities and was made in conformity with our policy to make exceptions in those instances where the small community is the center of a large rural area and relatively far removed from population centers and a Class C channel is needed in order to permit coverage of unserved areas which cannot obtain service from other cities. Justification for the proposed second Class C assignment to Lebanon obviously could not be made on the same ground or on the basis of its size, and the particular Class C assignment proposed would have foreclosed needed FM assignments elsewhere, including a proposed assignment to a community (Harrisonville, Missouri) lacking local FM service and without other opportunity for an available Class A or C assignment. In the circumstances, we decided that rule making on the proposal would not serve the public interest. That decision (cited in footnote 1, *supra*) did not, however, foreclose opportunity for Lebanon to be considered for a second FM assignment by another proposal if, despite its size and our assignment guides, it is found to be warranted in the public interest to serve a need and demand and the assignment proposed is not objectionable for preclusionary or other reasons.

6. In again discussing a claimed lack of need for a second FM outlet at Lebanon, Risner points out that, in addition to its daytime-only AM station and its Class C FM station, and the full-time Class IV AM station of Lebanon Broadcasting, Lebanon has a daily newspaper, owned by the principals of Lebanon Broadcasting. In its view, these are sufficient outlets for local self expression in a community the size of Lebanon and to assure effective competition there, and it urges that the competitive balance would be disturbed if Lebanon Broadcasting were to have a Class A FM outlet at Lebanon also. In reply, Lebanon Broadcasting points out that the Risner principals also own Station KRMS, a daytime-only AM station, and Class C Station KRMS–FM (Channel 279) at Osage Beach, approximately 34 miles from Lebanon, in Camden County, Missouri, which is contiguous to Laclede County in which Lebanon is located. It contends that the Risner principals, with their two daytime-only AM stations and two Class C FM stations, would still have considerably more control over the media for news dissemination to the public in these contiguous counties than it would have with its fulltime Class IV FM station, its local daily newspaper at Lebanon, and the proposed Class A FM station. In any case, regardless of who the occupant of the proposed Class A station might

be, since there is but one aural broadcast station in Laclede County—the Lebanon Class C FM station—which has the coverage capability of providing a nighttime broadcast service throughout the county at present, we think it would serve a public need and be more likely to increase rather than to decrease the possibilities for a healthy, competitive environment for broadcasting in Lebanon and Laclede County to provide opportunity at Lebanon for a Class A FM outlet also. While a Lebanon Class A station could not provide the wide-area coverage of the local Class C FM station outside of Laclede County, in the county it could provide significantly more nighttime service than the local Class IV AM station, with its limited nighttime service area, is able to provide. It would also have a coverage capability in Laclede County nearly comparable to that of the Lebanon Class C FM station and adequate to provide over 90 percent of the county residents with a choice of locally-oriented radio service at night and to permit more effective competition in the county for the nighttime radio audience and revenues.

7. At some length Risner again also argues that the adverse preclusionary effect of the proposed Channel 221A assignment proposal for Lebanon makes it objectionable. It takes issue with the conclusion reached from our prior study of the preclusionary effect of the proposal that, while the proposed Lebanon Channel 221A assignment would foreclose future assignments on Channels 218, 219, 220 and 221A, there are other available FM channels which could be assigned in the affected areas to meet any developing needs for FM outlets which could be reasonably expected in the relatively small communities in those areas, including an available assignment to each of the eight larger of the small Missouri communities lacking assignments in the affected areas mentioned by Risner.[2] Risner asserts that while there may be other FM channels available to portions of the extremely wide area in Missouri affected, those available are clearly inadequate in number to meet the possible future needs of all of some 50 communities lacking FM assignments in the preclusion area. Examination of the Risner exhibit reveals, however, that more than one-half of the 50 communities shown within the precluded area for Channel 221A are not listed in the U.S. Census, and that, other than the eight communities previously mentioned, the other communities without an FM assignment have populations of less than 1,000 persons. While it is possible, as Risner submits, that some of the small communities in the precluded area may experience tremendous growth in the future and have a need for an FM assignment, it furnishes no basis for an assumption that such growth may take place in any of them in the foreseeable or even distant future. We adhere to the view that sufficient other channels are available to meet any developing needs of the small communities that can reasonably be expected in the precluded areas and that the Lebanon Channel 221A proposal is not objectionable for preclusionary reasons.

8. Considering the above, it is our view that Channel 221A is a warranted assignment for Lebanon, notwithstanding our population and

[2] The eight Missouri communities lacking FM assignments mentioned by Risner are Buffalo (pop. 1,915); Marshfield (pop. 2,961); Ozark (pop. 2,384); Ava (pop. 2,961); Richland (pop. 1,783); Dixon (pop. 1,387); Mansfield (pop. 1,056); and Licking (pop. 1,002). Marshfield and Ava each have an AM station, and Buffalo has an FM educational station.

intermixture guidelines for FM assignments, since we are satisfied that the proposal is not unsatisfactory for technical or preclusionary reasons; that it would not affect any existing assignment or station; that it holds benefits for the public in the area by way of not only making a choice of local FM service available to Lebanon and in Laclede County, but by also meeting the need for a second locally-oriented nighttime broadcast service in substantial areas of the county now limited to one service; and that, notwithstanding the size of Lebanon and its local Class C FM and AM outlets, the proposed Class A assignment is likely to be used since it is requested by a local AM licensee who, being fully aware of the broadcast situation in the Lebanon area, has expressed a desire and intention to take the risk of operating on the requested Class A assignment, if authorized, in competition with the local Class C station.

RM–1952, Poteau, Okla.

9. The petitioner, Le Flore County Broadcasting Company (Le Flore), proposes the substitution of Class C Channel 250 for Channel 252A at Poteau, upon which it operates Station KLCO–FM. Le Flore also is licensee of a daytime-only AM station (KLCO) at Poteau. Poteau (population, 5,500), the largest city and seat of Le Flore County (population, 32,137), is located in southeast Oklahoma, approximately 30 miles southwest of Ft. Smith, Arkansas. Besides the Le Flore AM and FM stations, Poteau has a Class C FM outlet, Station KINB, licensed to Indian Nation Broadcasting Company (Indian Nation), which operates on Class C Channel 297, the only FM channel other than Channel 252A presently assigned to Poteau and in Le Flore County. Supporting comments and reply comments on the Poteau Class C proposal were filed by Le Flore. In its comments, Le Flore, in response to the Show Cause order contained in the Notice, restated its desire to have its license for Station KLCO–FM modified to specify operation on Channel 250 instead of Channel 252A at Poteau and its intention, if authorized, to commence operation on Channel 250 promptly. Opposing comments on the proposal were filed by Indian Nation, who also opposed rule making on it.

10. Communities the size of Poteau are normally assigned Class A rather than Class B or C channels designed for wider coverage than Class A channels, and no more than one FM assignment. However, in 1967, after consideration in rule making, we decided that, while Poteau had a Class A channel assigned and we would not ordinarily assign two FM channels to Poteau, it would serve the public interest to assign the Class C channel proposed (297). This decision was reached since the Class C channel could be assigned without deleting any other assignments and without adverse effect on the possible future needs of other communities and since, by using the Class C assignment at some distance from Poteau in order to make the greater antenna height proposed feasible (due to the available mountain sites southwest of Poteau), it would serve large areas without FM service and additional areas which would not be served by a Class A station on the subsequently-activated Poteau Channel 252A assignment.[3] The subject

[3] 9 F.C.C. 2d 805 (1967).

proposal raises the question of whether a second Class C assignment to Poteau in place of its Class A assignment is also warranted, notwithstanding its size and our Class C assignment guidelines.

11. Le Flore seeks the proposed Class C assignment in place of the Poteau Class A assignment upon which it operates to enable it to provide needed service to existing areas without FM service and to better serve the remaining coverage area, as well as to eliminate the technical and competitive disparity resulting from two stations in the same community operating on Class A and C channels. In its comments Le Flore restates its intention, if authorized, to operate on the requested Class C assignment, to market its AM and FM facilities as totally separate packages, to provide separate programming from that provided by its AM station, and to bring a totally new and distinct FM broadcast service to southeastern Oklahoma. It states that it will provide its audience with a first stereo broadcast service and will open a second, part-time studio in Stigler, Oklahoma (1970 population, 2,347), approximately 30 miles northwest of Poteau, where there is no aural broadcast outlet and, in its view, a need for a localized FM service, as evidenced by the letters which accompanied its prior showing.[4]

12. We felt that Le Flore's proposal warranted further consideration in rule making since, while more information was needed, and was called for in the Notice, to assess its preclusionary impact upon other assignments and its potential for providing a second FM service in the surrounding area, it appeared that the proposal was technically feasible and would not only enable Poteau and Le Flore County residents to gain a second technically comparable local FM outlet and nighttime aural service but would also enable large areas to gain a first and second FM service. The objections raised by Indian Nation, the local Class C licensee, to rule making on the proposal, based on contentions that a second Class C station at Poteau was not needed, would adversely affect the economic viability of its Class C station, would have an adverse preclusionary impact upon assignments elsewhere, and would not provide a first FM service to any significant area, were not supported by a showing to permit a meaningful determination or be persuasive.

13. The Le Flore present and prior showings indicate that Poteau is in a relatively isolated, mountainous area of southeastern Oklahoma where the population is dispersed throughout the area in scattered, rural pockets;[5] that Poteau, being the county seat and largest community in Le Flore County, serves as the cultural, economic and social center for much of southeastern Oklahoma; and that Poteau and the surrounding area have experienced considerable population growth in recent years,[6] with substantial further growth projected because of the opening of the Arkansas River project which affords the Poteau area

[4] Stigler is presently within the 1 mV/m contour of the Poteau Class C station but not of Le Flore's Class A station.

[5] Le Flore points out that the U.S. Census characterizes Le Flore County as 68.4 percent rural; adjoining Sequoyah County, 79 percent rural; and adjoining Latimer County, 100 percent rural.

[6] The U.S. Census shows that from 1960 to 1970 Poteau had a 24.2 percent population increase (from 4,428 to 5,500); Le Flore County, a 10.4 percent population increase (from 29,106 to 32,137); Sequoyah County, a 29.8 percent population increase (from 18,001 to 23,370), and Latimer County, a 11.2 percent population increase (from 7,738 to 8,601).

an inexpensive means of marketing its coal deposits, other minerals, and agricultural and paper products.

14. Le Flore claims that, due to the terrain and population distribution in this southeastern Oklahoma area, neither the limited service which its Class A station at Poteau can provide nor that which the Poteau Class C station provides (operating from a transmitter located across the Oklahoma border in Bates, Arkansas, some 15 miles from Poteau) can adequately serve this area. This is reflected, it submits, by the existing unserved, or so-called "white" area, depicted in the exhibit accompanying its petition which would be eliminated by use of Channel 250 at Poteau. Its showing, prepared in accordance with the *Roanoke Rapids-Goldsboro* criteria which we have approved for use,[7] demonstrates that a Poteau Channel 250 station, operating with power of 100 kW and 1800 feet HAAT, would provide a first FM service to an area of 410 square miles, with a population of 1,049 persons. It also shows that it would serve an area of 12,100 square miles, with a population of 348,320 persons, as compared to a Poteau Channel 252A station, operating with maximum facilities (3 kW and 300 feet HAAT), which would serve an area of but 660 square miles with a population of 17,222. A further engineering showing as to the area and population which would be provided with a second service from a Poteau Channel 250 facility, also prepared in accordance with the *Roanoke Rapids-Goldsboro* criteria, and called for by the Notice herein, accompanied the Le Flore comments on the proposal. It shows that a Poteau Class C station, operating with power of 100 kW and 1800 feet HAAT, would provide a second FM service to 84,462 persons located in an area of 3,180 square miles. Le Flore notes that the area receiving a second service would constitute 26.3 percent of the land area and contain 24.2 percent of the population in the service area of a Class C Channel 250 station.

15. In its opposing comments, Indian Nation again contends that, based on a survey it made by entering homes and making listening tests of its Class C station, the area and population that could be expected to receive a first FM service (white area) from a Poteau Channel 250 station is *de minimis* at best and that no more than approximately 427 persons instead of the claimed 1,049 persons, based on the Le Flore study, would receive a first FM service, most of whom, it states, are in an area that consists in large part of a game preserve. However, as we pointed out before, Indian Nation furnishes no data as to the types of receivers, the level of the signal received, or other information to permit evaluation of its claimed survey results, and the petitioner's showing, made in accordance with criteria which are considered reasonable and which we have approved for use, is the more convincing.

16. Our further study of the technical aspects of Channel 250 for a Poteau assignment in light of the record confirms our prior conclusion that it would be a technical feasible replacement for Channel 252A at Poteau and would not affect channel assignments elsewhere. It also convinces us that the proposal is not objectionable for preclusionary reasons. As pointed out in the Notice, a Poteau Channel 250 assignment would foreclose other assignments on Channels 249A and

[7] See *In re Roanoke Rapids and Goldsboro, N.C.*, 9 F.C.C. 2d 672 (1967).

250. The preclusion on Channel 249A would include areas in Arkansas, Oklahoma and Texas where there appear to be but two communities without an FM assignment where a Class A channel could be assigned: Atoka, Oklahoma (population 3,345); and Clarksville, Texas (population 3,346), each of which has a daytime-only AM outlet. As Indian Nation argues, it is important in considering the subject Class C proposal for Poteau, to judge the effect of the preclusion on these communities. It was for that reason we asked for a showing in the Notice as to whether other Class A assignments would be available to meet their needs. While none was submitted by Indian Nation, an additional engineering study was submitted by Le Flore with its comments which allays our concern in this regard. It shows that Channel 288A could be assigned to Atoka and Channel 292A to Clarksville without requiring other changes in assignments should a demand and interest for an FM assignment develop in these communities in the future.

17. As for the preclusion on Channel 250, as stated in the Notice, it would occur in Arkansas in areas where there are no communities which would normally qualify for a Class C assignment. Indian Nation again points out that Fayetteville, Arkansas (population 30,729) and Springdale, Arkansas (population 16,783) are within the Channel 250 precluded area. However, there is no basis for assuming that they would be adversely affected by a Poteau Channel 250 assignment or would warrant a Class C assignment since, as previously pointed out, Fayetteville has two occupied Class A FM assignments and two daytime-only AM stations, and Springdale has an occupied Class A FM assignment and two AM stations, one a daytime-only facility and the other, an unlimited-time Class IV operation. In addition, there are other AM and FM stations within 20 to 25 miles of both communities at Rogers, Arkansas (population 11,050) and at Siloam Springs, Arkansas (population 6,009), each of which has both an AM and FM outlet. Indian Nation also suggests that, in any case, there might be advantages to keeping Channel 250 in reserve to meet possible future needs in the preclusion area rather than in assigning it to Poteau. There would be none if, as Le Flore urges, it would have the effect of leaving Channel 250 lying fallow indefinitely, and this record provides no basis for assuming otherwise. The record does provide a basis, however, for our view that there would be public interest advantages in replacing the existing Class A assignment at Poteau with the proposed Class C channel.

18. Considering the mountainous terrain and scattered population in the relatively isolated rural area surrounding Poteau, a Class C channel is unquestionably technically superior to a Class A channel for serving the area, and considering the size of communities in this area and the availability of one Class C service from the Poteau Indian Nation station, it appears that there is merit in Le Flore's claim that unless a second Class C channel is assigned to Poteau the needs of the public in a substantial part of the surrounding area for a first FM service or choice of FM services might not otherwise be met. Its showing convinces us that the Class C assignment proposed would meet these needs and have public interest value over the existing Class A assignment at Poteau.

19. Indian Nation has repeated its prior claims that the Poteau market area cannot support two independently programmed and operated Class C stations and that a second Class C station at Poteau would cause economic injury to its Class C operation there sufficient to curtail its ability to serve the area. It submitted no showing, however, which would warrant either conclusion or a determination that the alleged adverse economic impact would be likely to cause diminution or destruction of overall program service to the public. In the absence of such a showing, we would not deny an application for a new station or an assignment proposal on economic impact grounds, for, as we stated in the Notice, it is not our function to place artificial restraints upon competition unless the overall public interest would be adversely affected thereby. In addition, these claims are disputed by the proponent, also an experienced radio broadcaster in the area, who has made the business judgment that there is sufficient economic potential in the Poteau area at this time to warrant operation with improved technical facilities so as to provide the Poteau area with a more effective and comparable outlet for competition and serving the area. The information which it has furnished concerning the characteristics of the Poteau area and its growth potential lends support for its optimism.

20. On balance, since the proposed channel substitution is technically feasible, and we are now satisfied that it would have no significant adverse preclusionary impact upon needed future assignments elsewhere, we are persuaded that it should be made since a second Class C facility at Poteau would provide a first or second FM service to substantial areas and population in this mountainous area which might otherwise be likely to remain unserved or underserved and the public interest and our FM objectives would be served thereby. In making this assignment, a footnote will be entered in the Table of Assignments to provide that it will be used with facilities at least equivalent to those upon which Le Flore's claim for needed service is based (100 kW and 1800 feet HAAT).

RM–1957, Gulfport, Miss.

21. The petitioners, Don Partridge and Houston L. Pearce, propose the assignment of Channel 244A to Gulfport, Mississippi, for a third Class A FM assignment for which they can apply. Their comments affirm their intention to apply for the proposed assignment promptly once it is made. No opposing or other comments on the proposal were received.

22. As mentioned in the Notice, Gulfport (population 40,791), the seat of Harrison County (population 134,582), is located on the southern coast of Mississippi, approximately 10 miles west of Biloxi (population 48,488), also in Harrison County, and is part of the Biloxi-Gulfport Standard Metropolitan Statistical Area (population 134,582). The two Gulfport Class A FM assignments are occupied by Station WTAM (Channel 272A) and Station WROA–FM (Channel 296A). Gulfport also has two AM broadcast stations (WGCM and WROA), both unlimited-time operations. The three Biloxi aural broadcast stations, two AM stations (Station WLOX, an unlimited-time operation, and Station WVMI, a daytime-only operation) and

a Class C FM station (WVMI–FM), which occupies Channel 229, the only Biloxi FM assignment, are the only other aural broadcast stations in Harrison County.

23. The prior technical showing of the petitioners indicated that Channel 244A is technically feasible for a Gulfport assignment since it could be assigned and used there in conformity with all separation and other technical requirements of the rules and without disturbing any other assignment or station. It also showed that Channel 244A would not be technically feasible for assignment and use in a community other than Gulfport without additional changes in the FM assignment table. Further, it indicated that the proposed Gulfport assignment would not be objectionable for preclusionary reasons since, while future assignments on Channels 243 and 244 would be foreclosed, the affected areas appear to be either sparsely populated, with no communities (the lower portion of Plaquemines Parish, Louisiana), or uninhabited (the Chandeleur Islands, off the coast of Lousiana, which fall within the Brenton National Wildlife Reserve).

24. It further appeared from the information furnished by the petitioners, which has already been adequately discussed in the Notice issued on their proposal, that Gulfport is a growing industrial area which during the 1960–1970 period had a population growth of over 35 percent, an over 50 percent increase in the number of local businesses, and an over 450 percent increase in retail sales; and that prospects are favorable for its continued growth in population—a population growth to 59,000 by 1985 is projected for Gulfport by a Gulfport Housing Authority study—and in its economy since Gulfport possesses a strategic port location, has diversified manufacturing and service industries, an established tourist business, and there are a number of large military and government installations in the area.

25. In view of the above, notwithstanding that our population guidelines for FM assignments provide for no more than two FM assignments to cities, such as Gulfport, with 1970 populations under 50,000, we believe that adoption of this unopposed FM assignment proposal for Gulfport is warranted. As mentioned in the Notice, these guidelines are not immutable standards and are but one of many considerations to be weighed in determining what action best serves the public interest and our FM objectives in a given case. In this case, the proposed assignment presents no technical or preclusionary problem and cannot be used elsewhere without other changes in FM assignments. Therefore, in these circumstances, and, in light of Gulfport's past growth and the favorable prospects for its future growth, we believe that the public interest and our FM objectives will be better served in thus enabling the public in the growing Gulfport area to have additional local aural broadcast service from another source.

26. In view of the foregoing, and pursuant to the authority contained in Sections 4(i), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective January 11, 1974, the FM Table of Assignments, Section 73.202(b) of the Rules, IS AMENDED to read as follows for the cities listed below:

City:	Channel No.
Lebanon, Missouri	221A, 279
Poteau, Oklahoma	250,[1] 297
Gulfport, Mississippi	244A, 272A, 296A

[1] Any application for this channel must specify at least an effective radiated power of 100 kW and antenna height of 1800 feet above average terrain or equivalent.

27. IT IS FURTHER ORDERED, That, effective January 11, 1974, and pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Le Flore County Broadcasting Company for Station KLCO–FM, Poteau, Oklahoma, IS MODIFIED to specify operation on Channel 250 in lieu of Channel 252A, subject to the following conditions:

(a) The licensee shall inform the Commission in writing by no later than January 11, 1974, of its acceptance of this modification.

(b) The licensee shall submit to the Commission by January 31, 1974, all necessary information complying with the applicable technical rules for modification of authorization to cover the operation of Station KLCO–FM on Channel 250 at Poteau, Oklahoma.

(c) The licensee may continue to operate on Channel 252A under its outstanding authorization until it is ready to operate on the new frequency. Ten days prior to commencing operation on Channel 250, the licensee shall submit the same measurement data normally required in an application for an FM broadcast station license.

(d) The licensee shall not commence operation on Channel 250 until the Commission specifically authorizes it to do so.

28. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-961

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of	
HUGHES AIRCRAFT CO. (NATIONAL SATELLITE SERVICES, INC.) For Authorization To Construct Three Satellites To Provide Domestic Communications Satellite Services	File No. 5-DSS-P(3)-71
GTE SATELLITE CORP. For Authorization To Lease Satellite Transponders and To Construct Five Earth Stations To Provide Domestic Communications Satellite Services	Docket No. 19812 Files Nos. 14-DSE-P-71, 15-DSE-P-71, 16-DSE-P-71, 17-DSE-P-71, 14-DSE-P-73

MEMORANDUM OPINION AND ORDER AND AUTHORIZATION

(Adopted September 12, 1973; Released September 12, 1973)

BY THE COMMISSION: CHAIRMAN BURCH CONCURRING AND ISSUING A STATEMENT IN WHICH COMMISSIONER JOHNSON JOINS; COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER H. REX LEE ISSUING A SEPARATE STATEMENT; COMMISSIONER REID CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A SEPARATE STATEMENT; COMMISSIONER WILEY CONCURRING IN THE RESULT; COMMISSIONER HOOKS CONCURRING AND ISSUING A STATEMENT.

1. One of the domestic satellite system proposals considered by the Commission in the domestic satellite proceeding (Docket No. 16495) was a proposal by GTE Service Corporation and various GTE operating companies, now GTE Satellite Corporation (GSAT),[1] to provide interstate message toll telephone service (MTT) and private line services by means of satellite facilities leased from Hughes Aircraft Company, now National Satellite Services, Inc. (NSS), and earth stations owned by GSAT. Hughes proposed to use the remainder of the satellite capacity to provide interconnection service to public broadcasting interests without charge and as a private venture for distributing programming to the cable television industry. The two proposals are interdependent in the sense that NSS states that it cannot proceed and will abandon its application if the GSAT proposal is not authorized.

2. In the *Second Report and Order* on domestic satellites in Docket No. 16495 (38 FCC 2d 844, 853-854, paragraphs 27-30), the Commis-

[1] Following the issuance of the *Second Report and Order* in Docket No. 16495, GTE Service Corporation formed a separate corporate subsidiary to engage in domestic satellite operations and transferred the pending applications to this entity. Hughes Aircraft Company likewise formed a separate corporate subsidiary, National Satellite Services, Inc., to pursue its domestic satellite proposal.

sion left open the question of whether GSAT should be authorized to provide interstate MTT service via domestic satellite and determined that GSAT would, in any event, be under the same restriction as AT&T with respect to the provision of private line and other specialized services. Concerning MTT service, the Commission stated:

> 27. * * * in encouraging multiple entry and the development of competition in the supply of domestic communications, we have maintained a distinction between the so-called monopoly switched telephone services now being furnished by AT&T and all other classes of existing and potential specialized services. We have made this distinction not for the purpose of protecting any established position that AT&T occupies in the MTT field. Rather, it has been our purpose and concern to protect the public in the availability of efficient and economic switched MTT services—an interest that might well be adversely affected by unnecessarily fragmenting responsibility for the planning and provision of the facilities required for this integrated service. On the other hand, we should not reject any proposal that might prove feasible and beneficial to the public simply because it represents some departure from the established scheme. This is particularly true when the proposal comes from an entity, such as GTE, which already is a significant participant in the furnishing of MTT facilities and services, although essentially as a carrier which originates, terminates, and switches large volumes of MTT traffic rather than in the provision of long lines transmission facilities.
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> 28. At least potentially, GTE's proposal offers several advantages. It would introduce more directly, although on a limited scale, the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network, which heretofore has been the sole responsibility of AT&T. It could provide a basis for regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies represented by AT&T's proposal and GTE's proposal. It could also tend to lessen AT&T's dominance and economic influence in the domestic communications field.
>
> 29. Notwithstanding these potential public benefits, there are a number of uncertainties, not dispelled by the information contained in the record before us, that must be resolved before we can make the required statutory finding that GTE's proposal will serve the public interest. Accordingly, before determining whether this portion of the Hughes/GTE applications should be authorized, we will require a showing of the nature described by the staff (paragraphs 98–99) concerning: what potential benefits might be achieved by affording GTE access to the satellite technology for this purpose; whether its proposal is economically justified from the standpoint of the public in terms of costs and prospective fill; the effect on GTE's present contracts for settlement with AT&T; GTE's plans for handling traffic in case of temporary outages or catastrophic failure of its satellite system facilities; how the costs of such facilities would be treated for rate-making and accounting purposes; and the kinds of data it will gather and report to the Commission to assist our evaluation of the efficiency and economy of any authorized operations compared to continued exclusive reliance on the interstate switched telephone facilities of AT&T.

3. Further, if GSAT's domestic satellite proposal is authorized, the *Second Report* did not foreclose the possibility that GSAT would be the designated entity to provide MTT service to Hawaii if it showed that the cost of using its facilities would be less than or approximately equivalent to the cost of utilizing AT&T facilities (*Second Report*, 38 FCC 2d at 858, paragraph 39).

4. Concerning the NSS proposal, the *Second Report* required the existence or creation of a separate corporate entity to engage in the satellite communications operation and stated further that (35 FCC 2d at 855):

> Any authorization to Hughes will be upon the further condition that it afford its CATV customers the option of owning receive-only earth stations to obtain the Hughes program offering and that of any other CATV program distributor offered by means of the Hughes system facilities. Hughes will also be required

to submit, for Commission approval prior to the issuance of any authorization to it, a plan whereby other CATV program distributors will be afforded reasonable access to receive-only earth stations associated with its system on an equitable and nondiscriminatory basis, including—if necessary therefor—by means of access to the Hughes transmit-receive earth stations and space segment facilities.

5. Neither GSAT nor NSS sought reconsideration of the *Second Report*. Instead GSAT filed amendments to the pending applications on October 16, 1972, which purported to make the showings required by the Commission. The staff afforded AT&T an opportunity to comment on the GSAT amended proposal, and AT&T filed its comments on November 27, 1972. Subsequently, GSAT filed a reply and AT&T filed supplemental comments. Hughes filed amendments to its applications on March 16, 1973. These amendments were placed on public notice on May 7, 1973, and occasioned no opposition at that time. Subsequently, on June 29, 1973, the Network Project filed a Petition to Deny, which is discussed in Part II, below. Since the Hughes proposal is contingent upon an authorization to GSAT, we will treat the GSAT proposal first. On September 11, 1973, an oral argument on the GSAT applications was held before the Commission *en banc*.

I. GSAT Proposal

A. Pleadings of the Parties

1. GSAT's position

6. Under the GSAT/Hughes proposal as amended, Hughes would build, own and maintain two, 12 transponder, satellites in orbit and a ground spare. GSAT would lease 10 transponders in one satellite (including backup rights to 10 transponders in the second satellite) for seven years at an annual rental of $900,000 per transponder.[2] Hughes proposed to offer the remaining transponders on the first satellite to public broadcasting interests without charge, and to use the backup capacity of the second satellite as a private venture for distributing programming to CATV systems. In addition to leasing transponder capacity from Hughes, GSAT proposes to own five earth stations and terrestrial microwave facilities for interconnection with GTE operating territories and/or the switched domestic telephone network of AT&T. The five earth stations would be located in Pennsylvania, Florida, Indiana, California and Hawaii. GSAT proposes to integrate its satellite system into the domestic switched telephone network, to participate in the planning and operation of the network, to include its satellite system facilities in the Division of Interstate Revenue Agreements, and to provide satellite service to Hawaii. The MTT service to be provided by GSAT would be furnished under the uniform AT&T interstate tariffs.

7. GSAT states that its proposed system would be integrated in a manner complementary to AT&T's existing terrestrial and proposed domestic satellite facilities serving high density routes between major metropolitan areas. It asserts that the relatively low circuit capacity of its leased transponders (6,600 two-way circuits versus the 28,000 circuit capacity of the proposed AT&T transponders) would allow

[2] See paragraph 43 for additional technical description.

the GSAT system to be efficiently filled by traffic between medium sized metropolitan areas. GTE telephone operating companies currently provide local and interstate communications services to 11 million subscribers. Those GTE operating companies that would be served by the GSAT system are experiencing annual telephone station growths from 5% to 15%, which is well above the national average. GSAT states that this growth should be accompanied by increased responsibility and participation in the ownership and administration of the long-distance telephone network.

8. Upon analysis of long-haul traffic forecasts on two-way traffic assignments for the years 1975–1980, using industry-wide traffic planning techniques, GSAT has concluded that there will be ample long haul trunks to fill its satellite system with growth traffic without deloading existing circuits on AT&T's terrestrial facilities. It estimates that the satellite circuit loading would grow from 39% of satellite transponder capacity in 1975 to 59% in 1977 and 92% in 1980. The trunk groups proposed for assignment to the satellite system are high usage trunk groups with at least one end terminating in a GTE operating company toll switching center, which is less than 300 miles from a GSAT earth station. In other words, trunk groups that require more than 300 miles of terrestrial interconnection will not be satellite assigned. Only a portion of high usage groups between any two points would be satellite assigned and on the average a 50% diversity between satellite and terrestrial facilities would be maintained. GSAT has submitted traffic forecasts for both two-way and one-way trunk operations, which include forecasts for service between Hawaii and the Mainland. Implementation of the two-way plan would require AT&T's agreement to route some traffic originating in Bell system operating territories and destined for GTE operating territories over the GSAT satellite facilities. To date, AT&T has not agreed to do so. However, should AT&T and GSAT fail to reach agreement on a two-way interconnection, GSAT asserts that a one-way circuit loading (i.e., only traffic originating in GTE territory) could be achieved that is nearly equal to the circuit loading in two-way trunk assignment through the use of smaller trunk groups and more multiplex equipment.

9. GSAT further states that circuit assignments will be fully coordinated with AT&T and there will be no resultant fragmenting of the overall network planning, management, forecasting and design. Long range network planning is today essentially a function of AT&T, with coordinated planning where independent telephone company switching and transmission facilities are concerned. GSAT would expect AT&T to continue to perform this function and would closely coordinate its planning and operations with AT&T. Transmission facility planning and implementation have been coordinated with GTE telephone operating companies for many years, and GTE personnel have participated in training programs for both network management and toll switching machine administration. If its application were granted, GSAT would establish the same type of coordination, cooperation and liaison with AT&T Long Lines that has long existed between GTE operating companies and Bell operating companies. GSAT also expects to participate with AT&T in developing joint and

reciprocal restoration plans whereby either company could use the other's facilities for restoration during outages.[3]

10. GSAT's gross investment in the proposed system will range from $52.3 million in 1975 to about $53,7 million in 1977. Expenses (revenue requirements) for the same years are estimated at $27,652,000 and $27,852,000. Since GSAT will be a distinct accounting entity, measurements of the corporation's discrete interstate facilities will be possible, and it believes that useful operational comparisons can be made between its system and AT&T long line service. GSAT anticipates that its satellite system facilities will be cost effective in the first year of operation (i.e., revenues will exceed costs). A GSAT comparison of the estimated costs and revenues (including an estimated return on investment) shows that revenues would exceed costs by $25.9 million in 1975 and $64.4 million in 1977 based on two-way traffic assignment. For one-way traffic assignment, revenues would exceed costs by $14.1 million and $47.7 million in 1975 and 1977, respectively.

11. GSAT urges that the revenues from, and revenue requirements for, MTT service provided on the GSAT system should be included in the Division of Interstate Revenue Agreements. The existing Agreements recognize that other communications carriers besides Bell companies participate in the provision of interstate services and are therefore included in the settlement arrangements. According to GSAT, no changes in these agreements, with the possible exception of Hawaii and the description of points-of-interconnection, are needed for their implementation. In urging that its satellite system should be included in the division of revenues, GSAT gives several reasons. First, it claims that the system would not impose an economic burden on interstate rate payers and that the traffic planned for assignment to the GSAT system can be more efficiently handled on its system than by AT&T's existing or proposed facilities. Second, only joint service will be provided over the GSAT facilities and this service is currently included in the division of revenues. Third, if its satellite system is not included, two interstate rates between the same points would evolve because two different revenue requirements would be developed. Fourth, AT&T plans to include its satellite facilities in the division of revenues. Finally, including GSAT's satellite system in the division of revenues is a practical way to prevent economic rivalry from developing and to insure cooperation and efficient loading of facilities.

12. GSAT submits that its satellite system should provide service to Hawaii. To exploit one of the benefits of the satellite technology, GSAT plans to route Hawaiian traffic destined for the eastern United States directly into its Midwest and Northeast earth stations and thereby avoid line haul costs across the Mainland from its West Coast earth station. GSAT notes that AT&T plans to route all Hawaii traffic through a West Coast gateway station. Direct routing is expected to produce substantial savings in terrestrial line haul costs as traffic be-

[3] GSAT asserts that two features of design give the network an inherent ability to mitigate the effects of outages. These design features are automatic alternate routing and diversity of transmission paths used for a group of trunks. Moreover, in the event of the failure of a GSAT transponder, the associated transponder on the back-up satellite could be activated in a matter of minutes. The earth stations would be provided with redundant equipment and the probability of a complete equipment failure is remote absent a natural disaster.

tween GSAT's eastern earth stations and Hawaii grows over time. Direct routing also means that GSAT's overall costs of serving Hawaii by satellite are lower than AT&T's costs. AT&T has not proposed an earth station in Hawaii and acknowledges that the space segment costs of the two systems are similar, with other increments in cost approximately equal. The terrestrial line haul costs are a major difference between the two satellite systems and direct routing to the Midwest and Northeast earth stations avoids these costs to the benefit of the public.

13. By way of summary GSAT gives the following reasons why a grant of its application would serve the public interest without adversely affecting the quality and efficiency of MTT service:

a. As the Commission found, the GSAT system would introduce more directly the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network and provide a basis for the regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies. It could also tend to lessen AT&T's dominance and economic influence in the domestic communications field.

b. GSAT is the only applicant controlling sufficient network telephone traffic to enable economic sharing of interstate facilities with AT&T.

c. The above-average growth of GTE affiliates should be accompanied by increased responsibility and participation in the ownership and administration of the long-distance telephone network.

d. The standards used in designing the GSAT system are industry accepted standards.

e. Sufficient long-distance network traffic is generated by GTE telephone operating companies to efficiently load the proposed satellite facilities.

f. Fully coordinated and unified network planning and management will be preserved.

g. The facilities will be cost effective in the first year of operation, and will not impose any economic burden on, or otherwise adversely affect, the MTT network.

14. GSAT further notes that benefits have already been derived from its proposal to implement a domestic satellite system. Following the original GTE application, AT&T and Comsat renegotiated their agreement with the result that the satellite lease rate paid by AT&T in the second system proposal was reduced by 40% from the original system proposal. Similarly, after GSAT indicated that it would derive 1200 circuits from a satellite transponder, AT&T modified its plans to derive the same number of circuits rather than the previously proposed 900. Taken together, these two changes resulted in a reduction of more than 50% in the projected cost per circuit of AT&T's satellite system. It seems reasonable to conclude that additional, future benefits can be anticipated if GSAT's satellite system is authorized.

2. AT&T's position

15. AT&T urges that the GSAT proposal, when compared with AT&T's domestic satellite proposal, is less efficient and more costly per circuit, and that a grant of GSAT's applications would result in the unnecessary and wasteful duplication of facilities. By virtue of increases in the circuit capacity of AT&T's satellite system now contemplated, the annual cost per circuit of AT&T's domestic satellite system would be approximately $2,300, including the costs of service to Hawaii. Moreover, other modifications contained in the amended applications filed by AT&T on March 29, 1973 would bring the annual cost per circuit down to $1,950 in 1977. This cost per circuit is to be contrasted with GSAT's estimated cost per circuit of approximately

$4,200. The difference in comparative cost per circuit would impose upon users of the nationwide message network an unnecessary economic penalty of more than $23 million and would also cause the reassignment and vacating of facilities which would result in additional unnecessary costs of $7.3 million or more. Moreover, because of the difference in annual per circuit costs, the GSAT system should not be authorized to serve Hawaii.

16. There is no segment of the public which would receive any benefits from GSAT's proposal, in terms of cost or service, not now available to them through the existing interstate terrestrial network or as the network will be augmented by the AT&T satellite system. The GSAT proposal would simply result in the public experiencing higher costs without offsetting benefits. The Bell System companies are unwilling to subsidize the GSAT proposal by revising or entering into new divisions of revenues or interconnection arrangements with General System companies. There would be no competition between AT&T and GSAT in the ordinary sense, because the MTT user would not have a choice of suppliers of message telephone service. GSAT disclaims any intention to affect rates or services to the public. Moreover, GSAT's proposal would not serve as a yardstick to measure relative performance between AT&T and GSAT in the provision of message services. Under the GSAT proposal, its satellite system would simply be included in the overall network or interstate facilities, the costs of its system would be obscured by their inclusion in prevailing settlement arrangements, and wasteful diseconomies would be encouraged.

17. AT&T also claims that there are system inefficiencies in the GSAT proposal—including its lack of capacity, unsuitable earth station locations, unnecessary connecting terrestrial facilities and inefficient traffic routing. Specifically, AT&T urges that the GSAT Indiana and Pennsylvania earth stations are considerable distances from the population centers generating and receiving most of the calls that will flow through these earth stations. For example, the bulk of the Indiana station traffic is destined for the Chicago-Milwaukee and Toledo-Detroit areas. Yet the earth station is far removed from them and these distances must be spanned by terrestrial facilities. Moreover GSAT's proposal to provide service to Hawaii from multiple Mainland earth stations, instead of one West Coast earth station as proposed by AT&T, will require extra equipment that would equal or exceed the cost of terrestrial interconnection between the West Coast and Midwest and Northeast earth stations.[4] Further, only about 60 circuits would be delivered from Hawaii directly to the Indiana and Pennsylvania earth stations during the early years of the proposed GSAT operation.

[4] AT&T asserts in this respect that Hawaii would be penalized by a decrease in level of 8db relative to other Mainland earth stations and that this must be compensated for in one or more of the following ways: utilization of higher powered transmitters in Hawaii, decreased circuit capacity, poorer noise performance, or use of additional transponders and hence more receivers. Since GSAT appears to be proposing the same performance in Hawaii as other points, and is further proposing to limit the number of channels per transponder, AT&T assumes that more receivers and higher powered transmitters will be required in Hawaii. AT&T states that the extra cost of this equipment in Hawaii plus the extra receivers and multiplex equipment required at the Mainland earth stations in order to accommodate the proposed arrangement would equal or exceed the cost of handling the 60 estimated channels on terrestrial facilities between the West Coast earth station and the Midwest and East Coast terminals.

18. Moreover, the present network is designed on the principle that high volume traffic between points be carried by high usage groups directly linking those end points. Only in the event that all of those direct trunks are busy will a call require an alternate routing that would require switching and the use of circuits higher up in the network. Since such occasions are rare, the alternate routes in the hierarchy are lightly engineered. Thus, significant amounts of traffic entering the network at these points will overload them and require the provision of new facilities. The alternate routing strategy in the GSAT proposal is violative of this principle because telephone calls would be routed directly to Norway, a regional center in Illinois.

19. The Commission should recognize that GSAT proposes a fundamental departure from present principles that guide the provision of the nationwide facility network. At present, independent telephone companies, such as GTE companies, provide data regarding traffic to and from their territories and provide end link facilities. AT&T and other Bell System companies plan, engineer and provide the long haul facilities which comprise the heart of the nationwide network. Under the present approach, facilities now being added to the network—such as L–4 and L–5 cable, offer great economies in long haul, high capacity systems. These, and the economies anticipated from wave guide systems and future generations of satellites, are made possible because of the unified operation of the Bell System in planning, developing, engineering and installing high capacity facilities. The proposed GSAT facilities, which would be inserted in the heart of the network, are not only relatively uneconomical but also would disrupt a facility plan which has made possible great benefits to the communications of the nation. The introduction of this other facility into the network would create incentives for dispute and economic rivalry. New entities having a parochial interest in particular facilities would seek to maximize their provision and use, even if such use were not in the best interest of the network as a whole. Disputes regarding the licensing of facilities and concerning the terms and conditions of traffic routing and interconnection would inevitably be generated. The net result would be a severe impairment of the efficiency and economy of the nationwide facility network.

3. GSAT's reply

20. In response to AT&T's contention that the GSAT system will impose an economic burden on the users of the switched message network, GSAT argues that its satellite circuits can be provided at lower costs than existing long-haul terrestrial circuits, will generate sufficient revenues to make a net contribution to network operations and, therefore, should be authorized and permitted in the division of revenues. Contrary to the claims of AT&T, the burden criteria set forth by the Commission do not involve a comparison of GSAT's satellite system costs with the incremental costs associated with an expansion of AT&T's existing terrestrial system or a comparative analysis of the two proposed satellite systems. According to GSAT, the relevant comparison for an assessment of economic burden is the annual revenue generated by its satellite system relative to total annual costs (including return) associated with the system. GSAT asserts that a revised

comparison of its estimated costs and revenues for 1975 and 1977 for two-way trunking shows that revenues exceed costs by $30.7 million and $70.9 million in the two respective years. GSAT claims that this represents an annual cost advantage for the GSAT system over the use of the traditional network facilities on the order of $12 million in 1975 and $39.8 million in 1977.

21. Circuits assigned to GSAT's satellite system do not need to result in cost penalties that would be a consequence of displacing existing circuits assigned to terrestrial facilities. Contrary to the claims of AT&T, no terrestrial circuits will be vacated by the integration of GSAT's satellite system into the network because GSAT plans to load its satellite system with growth traffic. Circuits will be deloaded only if arrangements with AT&T for two-way trunking cannot be concluded and, even in this unlikely event, AT&T has overestimated the costs that would be incurred by 70–100%. However, to the extent that circuits on terrestrial facilities are vacated, they will be available to meet AT&T growth requirements.

22. AT&T's allegations that the GSAT proposal is inefficiently designed because of the location of the earth stations is not supported in fact. GSAT submits that it selected the earth station sites and assigned circuits to satellites in such a manner as to exploit the distance insensitive characteristic of satellite system costs. Earth station sites are based upon a consideration of frequency coordination, traffic patterns, and the need for new terrestrial facilities. The consequence of weighing these factors is that the earth station sites selected are more suitably located than AT&T's sites for the traffic GSAT plans to carry over its satellite system.[5] A second alleged inefficiency is GSAT's facility routing plan that limits satellite circuit assignments to trunks that terminate in GSAT operating territory. GSAT is amenable to carrying traffic that terminates outside its operating areas and it agrees that traffic handling agreements which bundle circuits together, without regard to ownership of terminating offices, is more efficient. However, GSAT has been unable to find any suggestion by Bell System companies that such an arrangement would be acceptable to them. In consequence, GSAT saw no alternative but to assign circuits which it controls to its satellite system.

23. With respect to Hawaii service, GSAT further urges that the "penalties" cited by AT&T are ephemeral at best. The GSAT applications are quite specific in explaining the method used for service to and from Hawaii. There is no decreased circuit capacity and no increased noise performance. It is true that an 8 db power increase is required of the single Hawaii transmitter. However, contrary to AT&T's assertion the only extra equipment required to handle 60 estimated circuits at GSAT's Midwest earth station is one extra receiver. Using AT&T's annual circuits costs as revealed in Table B of their comments, the incremental cost of providing terrestrial facilities equivalent to those 60 circuits would be $740,934 and this incremental

[5] GSAT asserts that the proposed AT&T satellite routing for a Tampa-Indianapolis trunk would involve a minimum of 630 miles of terrestrial facilities (via the AT&T proposed Woodburg, Georgia and Hanover, Illinois earth stations), while the GSAT routing would involve only 129 miles of terrestrial facilities. GSAT alleges that this would bring AT&T's circuit cost for this route to $4,665 rather than the $2,340 claimed by AT&T.

cost would increase to $1.8 million in 1977. The annual cost of a single receiver is less than either amount. While the number of circuits required to GSAT's proposed eastern stations are few in the early years, the number is projected to grow to well over two hundred in 1980, and direct routing of circuits offers substantial savings which will inure to the benefit of the public.

24. Contrary to the claim of AT&T, GSAT's satellite system will not have an adverse impact on the switched message network and will not disrupt operation and planning of the network. The network is a joint endeavor, with GTE and other independent telephone companies currently contributing to the planning of the network and operating their facilities as part of the integrated network. GSAT does not propose any changes in the existing principles that govern the participation of each carrier in the network, nor does it propose overlapping responsibilities that would tend to fragment the planning and management of the network. In short, GSAT foresees no major changes in the planning or operation of the network caused by integration of its satellite system.

B. DISCUSSION AND CONCLUSIONS

25. We have carefully reviewed and analyzed the contentions of the parties, as summarized above, and have tested their persuasiveness and weight against the public interest standards contained in the Act and our policy determinations in the domestic satellite field. It is our considered judgment that the public interest would be served by granting the domestic satellite applications of GSAT and authorizing it to serve Hawaii. Our decision rests essentially on the considerations summarized below.

26. The GSAT proposal, like the AT&T proposal, would establish a satellite system that would be used to supply basic switched voice telephone service and, eventually, private line and other specialized services. Such an investment by an established telephone company becomes part of its rate base upon which the charges to users are based for monopoly voice telephone services. Therefore, public interest considerations require that particular attention should be given to proposals ultimately affecting users of the basic MTT service. Thus, in the event of an imprudent satellite investment decision by a telephone company, at least some portion of the cost would fall upon the consumers of the MTT service. In contrast, the cost of a similar imprudent decision by a firm not providing a basic monopoly voice service, would be borne by investors who risk their capital. The GSAT application is a proposal which affects users of the MTT service.

27. Concern for the users of basic MTT service raises the issue of the manner in which we should evaluate the GSAT proposal. In our *Second Report*, we enumerated a number of distinctive benefits that could enure to the public from the entry by a responsible and experienced communications entity, such as GTE, into greater involvement in the planning and provision of facilities required by the MTT integrated network. Specifically, we stated:

> It would introduce more directly, although on a limited scale, the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network, which heretofore has been the sole responsibility of AT&T. It could provide a basis for regulatory comparison of the relative effi-

ciencies and cost advantages of somewhat different technologies represented by AT&T's proposal and GTE's proposal. It could also lessen AT&T's dominance and economic influence in the domestic communications field.

28. Thus, we concluded on the basis of the record in Docket No. 16495 that the public interest could well be served by the GSAT approach to the use and operation of satellite systems for MTT service provided that we could be reasonably certain that implementation of that approach would not jeopardize efficient MTT service. In the latter connection, we noted that there were uncertainties not dispelled by the information then before us as to whether the GSAT proposal would constitute a burden or otherwise adversely affect the interstate MTT network. These uncertainties went principally to whether the GTE proposal was economically justified in terms of costs and prospective fill, the effects on existing MTT settlement arrangements between GTE and AT&T; GTE's plans for handling traffic in case of outages or catastrophic failure of its GSAT system, etc.

29. The GSAT amended proposal has addressed the various matters and has sufficiently dispelled those remaining uncertainties to justify the conclusions (1) that its proposal is feasible and can be expected to prove beneficial to the public, and (2) that a grant of its application will entail no significant risk that the GSAT system will be a burden on or adversely affect the MTT network. In reaching these conclusions, we have carefully considered the comments of AT&T in opposition to a grant.

30. With respect to costs and prospective fill, the GSAT traffic forecasts and other material in the applications make a reasonable showing that the proposed GSAT system will carry sufficient MTT traffic consisting principally of growth traffic, to produce revenues in excess of the total costs associated with its system. AT&T does not dispute this. Hence, there will be no economic burden on nationwide MTT revenue requirements and, with the passage of time, the proposed system may be expected to make an increasingly greater contribution to network operations. Inasmuch as GSAT's proposal contemplates that its system can be used most efficiently for primarily growth traffic, GSAT will continue to use AT&T terrestrial circuits now handling existing traffic. Adjustment problems will be minimal and reasonably accommodated over time. In addition, it is reasonable to expect from experience that any AT&T terrestrial circuits vacated during the adjustment period will be used to meet AT&T's growth requirement.

31. As indicated above, AT&T does not dispute that the GSAT system will recover its total costs from the revenues derived from GSAT traffic and in this context will constitute no burden on the nationwide MTT revenue requirement. The principal thrust of AT&T's challenge to the GSAT system proposal is that on a comparative bases, AT&T's satellite system will involve lower per circuit satellite costs than the GSAT system. However, AT&T's direct cost comparison is neither valid nor persuasive as a ground for declining to authorize the GSAT proposal for reasons we will now discuss.

32. Any attempt at comparative cost analysis requires the application of uniform standards of evaluation to the satellite systems being compared. However, such uniformity of standards of comparison cannot properly be invoked in this matter. The GSAT and AT&T

proposals are each designed to serve different localities and traffic centers with significantly different system configurations that interface with different landline connecting arrangements necessary to supply complete end-to-end service. The cost calculations submitted by both GSAT and AT&T are therefore based on different assumptions as to the traffic to be handled by each system, the future growth in the traffic, the routing of such traffic, the elements of plant (both satellite and landline) involved in such routings and the costs associated with each element.

33. In this connection, it must be kept in mind that the satellite proposals before us are not proposals for complete communication systems. Each application represents a single major investment decision in a communications environment that requires a number of interrelated decisions having major cost implications. Thus, each applicant is relying to a greater or lesser extent on the supply of landline facilities with which the satellite systems will interface, depending upon the specific locations to be served, the volume of traffic to be moved, the growth rates assumed with respect to those traffic volumes, and various trade-offs between alternative communication system configurations involving both satellite and landline facilities. Thus, each system will require different types and qualities of complementary terrestrial facilities to accommodate differences in traffic distribution and traffic volumes throughout the areas served via satellite. In the case of each satellite proposal, certain of the accompanying terrestrial investments and expenses are included in the costs, while other attendant terrestrial costs are not. For example, AT&T did not include substantial multiplexing costs on the assumption that these costs would be incurred in any event by its landline system if not by its satellite system. In contrast, GSAT included associated multiplexing costs.

34. Because there is no necessary correlation between the most efficient supply of a complete communication service and the lowest forecasted cost of a particular satellite system used in that service, it would be erroneous to predicate a choice of systems based upon a comparison of such forecasted costs, particularly when there are significant differences between the systems, as in this case. If this approach, which is implicit in AT&T's challenge of the GSAT system, were adopted, it would encourage the submission of proposals that minimize the satellite transmission costs, even if, as a consequence, landline costs are thereby made inordinately great and the total system operations inefficient. Indeed, AT&T has recognized the deficiencies of attempting to make direct cost comparisons in its Reply Comments of July 21, 1971 in the Domestic Satellite Inquiry (Docket No. 16495) when, in response to the Department of Justice's filing which urged competitive bidding for the selection of an MTT satellite system, AT&T stated:

> **Even if the Commission were to accept a 'least cost' criterion for common carrier acquisition of a satellite system, the necessary cost comparisons would be extremely difficult to administer in practice. Such a standard would require the carrier to place a value on every aspect of various system proposals, in the facilities it chose. The variations in the different systems would make true comparisons extremely difficult if not impossible to carry out. Furthermore, the 'cost' quoted in the various applications are not firm costs at all, but merely**

best estimates of what eventual costs will be. A test of least estimated cost would place an unwarranted premium on optimism in estimating future cost. (Page 16.)

In that same filing, AT&T goes on to point out that cost is not the only factor to be considered when making an investment decision with respect to new facilities and it claims that adoption of such a standard would be unrealistic. We should perhaps note that in a "competitive" bidding situation, all bidders are governed by a set of predetermined standards or terms of reference. Thus, cost comparisons among bids have relevance and validity. However, where, as in this case, each bid is premised on its own terms of reference as to the communications market to be served and the method of serving that market, costs clearly are not comparable.

35. Moreover, the inherent weakness of placing too much reliance on the cost comparisons as urged by AT&T, is further demonstrated by the substantial changes in the technical design and costs we have already seen in AT&T's own program. Thus, we have recently been informed that the costs of the proposed AT&T space segment to be leased from Comsat have increased by some $30 million of which amount AT&T will absorb $15 million. Particularly in light of our experience from international operations, it is reasonable to expect further revisions and refinements in cost estimates before the satellite systems become operational and it is a virtual certainty that cost estimates will differ from actual experienced costs. Thus, to draw comparisons along the lines proposed by AT&T would be unproductive of meaningful results. Indeed, if such comparisons were adopted, we would automatically select the largest capacity satellite system as the most efficient.

36. Accordingly, because AT&T's challenge of the GSAT proposal is premised on what are essentially comparisons of costs relating to significantly different system configurations and operations, we conclude that such challenge is without merit.

37. Apart from the cost element, potential public benefit may be realized in other areas as a result of authorizing the GSAT proposal. GSAT will be able to assume an increasing role in the planning and implementation of the nationwide network which can be expected to lead to the consideration of alternative plans and ultimate improvements in the network. Indeed, as noted above, in response to GSAT's proposed 1200 voice circuit capacity per satellite transponder, AT&T increased its original estimate of 900 circuits to 1200. In this connection, we do not share AT&T's concern that the proposed GSAT facilities will be disruptive to the planning and efficient operation of the MTT network or that introduction of the GSAT facility will create disputes and economic rivalries. We are satisfied that GSAT can and will conduct itself in a responsible and constructive fashion and that it will deal with problems of planning and operations of the network in the same coordinate and cooperative manner as its parent GTE has dealt with the Bell System for several generations, with efficient service to the public being the overriding concern in approaching all joint matters.

38. Further, we look with particular favor on the manner in which the GSAT proposal plans to integrate Hawaii directly with the North-

east and Midwest Mainland earth stations, thereby eliminating terrestrial transmission across the U.S. Mainland which would be an integral part of the AT&T proposal. As we have recently announced on several occasions, we require as a matter of policy that Hawaii shall be treated as a purely domestic point in the provision of communications services. *Second Report*, 35 FCC 2d 844, 856–858; *Memorandum Opinion and Order* in Docket No. 16495, 38 FCC 2d 665, 692–695. Traffic between Hawaii and the Midwest and Northeast earth stations may be relatively small at the outset. However, as Hawaii-Mainland traffic is integrated for rate purposes into the Mainland interstate rate pattern, rates will be greatly reduced with resulting traffic stimulation. In our view, the GSAT proposal is more compatible with our rate and policy objectives with respect to the treatment of Hawaii than the AT&T proposal. For the GSAT proposal makes full use of the distance insensitive cost feature of satellite technology in its approach to Hawaiian traffic.

39. Finally, we believe that authorization of the GSAT proposal will have beneficial consequences in other areas. We anticipate that the GSAT system will serve as an aid to regulation by providing a benchmark for comparing the actual costs and performance of two different satellite systems used in the supply of MTT services, a benchmark which has never been available to us in the past because of AT&T's monopoly role in the provision of interstate MTT services. Moreover, at a time when AT&T is facing enormous pressures in the raising of capital funds, to the point where the magnitude of its needs creates problems requiring our special attention, we think it both desirable and prudent to authorize some other entity, absent special circumstances militating against doing so, to share the capital costs involved in major facility emplacements for the MTT network. This is particularly true where, as here, the other entity will be serving primarily its own traffic centers.

40. In sum, we believe that the GSAT proposal is viable by its own terms and provides reasonable grounds to expect that the public will benefit from the introduction of a new entity into the long haul transmission markets. Having found that a grant of GSAT's application is in the public interest, we expect that the parties involved—AT&T, GTE and GSAT—will negotiate appropriate interconnection and settlement arrangements. It is our view that for settlement purposes the GSAT system should be treated like any other facility that is employed as an integral part of the nationwide network telephone system. Thus, the costs related to the construction and operation of such a facility should be recovered from interstate revenues (including those revenues generated by the GSAT services herein authorized) as are all other costs which are incurred by the joint participants in the rendition of MTT service.[6]

41. We shall require both GSAT and AT&T to submit periodic reports with respect to the status of their progress in arriving at settlement and other operating arrangements, as well as detailed information with respect to the distribution of traffic handled over the MTT

[6] In this connection, we take no position herein concerning the appropriate rate of return factor for inclusion in GSAT's recoverable costs.

network involving the GSAT system, including cost data as appropriate and information with respect to efficiencies as well as outages, delays, etc. We are delegating authority to the Chief of our Common Carrier Bureau to formulate and prescribe the appropriate details for such reporting.

II. NSS Proposal

A. Pleadings of the Parties

42. In compliance with the requirement of paragraph 32 of the *Second Report* (35 FCC 2d 844, 855), Hughes has formed a separate corporate subsidiary, National Satellite Service, Inc. (NSS), to pursue its domestic satellite applications. Hughes states that NSS will be responsible for fulfilling the contractual commitment to GSAT, whose operations are discussed above, as well as for the general commitment to provide two free channels of service to the Corporation for Public Broadcasting; NSS will also develop the private program distribution service for the cable television industry. Hughes would continue to supply financing and would contract with NSS to build the satellites.

43. NSS seeks construction permits for three HS–333 satellites, two in orbit, to be launched by a Thor Delta launch vehicle, and one ground spare. The satellites would each have 12 transponders, and be similar to those of the Telesat Canada system. The satellites would be designed for a service life of seven years, and provide coverage of Hawaii, the 48 contiguous States and Alaska. It is estimated that construction costs for the space segment, including tracking and control ground equipment [7] and launch services, will amount to approximately $42 million. First year operating expenses are estimated at $9.3 million, plus an additional $5 million for market testing and evaluation of program service. The latter estimate does not include major costs for program development for the cable television network.

44. Hughes has committed itself to provide NSS with all necessary financial support. The application states that this will be provided through direct equity investments, loans, and credit arrangements as may be needed. Hughes has annual sales of approximately $900 million, and its net worth exceeds $150 million. Its total long term debt is about $12 million; current assets exceed its combined current and long term liabilities by more than $30 million. The application also contains a letter from the Bank of America indicating that Bank's willingness to cooperate in the event bank financing is desired.

45. NSS proposes to use the back-up transponders on the second in-orbit satellite to develop a program distribution service for the cable television industry. Since 1970 Hughes has conducted extensive investigations into various types of programs which might be attractive to complement the existing over-the-air service provided by network affiliates and other stations. Statistical sampling and polling techniques have been utilized to explore various types of specialized interests which might provide a nucleus around which programming material

[7] While NSS also seeks construction permits for an earth station at Triunfo Bowl, near Los Angeles and a satellite remote control earth station at Bull Fork Creek, near Greensburg, Indiana to perform the tracking, telemetry and control functions, the latter applications (15–16–DSE–P–73) are not yet ripe for Commission action. NSS requests that action be taken first on the satellite applications.

could be developed. Research has developed nearly 50 types of special interest programs in which there may be sufficient interest to justify their inclusion in the type of offering contemplated. Studies to date suggest that cultural, children's, educational, vocational training, public affairs and minority programming should be included. NSS will continue to explore alternative marketing techniques so as to develop the best method for distribution of program materials. It is anticipated that it will be necessary for NSS to engage in extensive experimentation to develop the right programming materials and marketing methods.

46. NSS will permit access to its system by means of receive-only earth stations owned by its cable television customers, and has no objection to meeting the requirement specified in paragraph 32 of the *Second Report* with respect to access to its facilities by other program distributors. It offers the following plan. NSS plans initially to utilize the GSAT earth station in the Los Angeles area for transmission to its transponders and receive-only earth stations, and is prepared to enter into negotiations with GSAT for a 6–12 channel interruptible transmit capacity under a three year lease. It is contemplated that the lease charge of GSAT will approximate $100,000 per channel per year. Although contemplating block programming which would utilize a substantial portion of the back-up satellite on a pre-emptible basis, NSS nevertheless expects that some transponder space would remain available for occasional use by outside program distributors who could not otherwise effectively distribute their program material. NSS is willing to make available a transponder and its entire receive-only complex as a package, on an equitable and non-discriminatory basis, charging occasional users rates no higher than are charged by existing common carriers for similar services, and in no way discriminating among producers to the extent there is available capacity.[8] NSS cannot set exact rates for this type of service because of uncertainties with respect to launches, the inability to predict transponder life, and the unknown extent of receive-only station installations. However, the cost will not exceed those charges for comparable service by other satellite systems.

47. On June 29, 1973, the Network Project filed a Petition to Deny the NSS applications, together with a motion for acceptance of late filing which is hereby granted. We will consider the Network Project's Petition to Deny on its merits.

48. The Network Project (the Project) claims standing as a party in interest because it is an association dedicated to research and action in the communications field, a user of library and other educational facilities with an interest in the potential of domestic satellites for information retrieval, and a producer of radio documentaries. The Project claims that the NSS applications are deficient for failure to show the specific community or types of communities to be served, or to ascertain the problems, needs and interests of such communities. The Project asserts that NSS has totally neglected some communities of

[8] NSS does not plan to lease an entire transponder for extended periods or for a specified period on a regular and continuing basis to an individual user. Rather, NSS states that it will ensure that no single user is permitted to preempt any particular time period or amount of time to the disadvantage of other users.

interest it should serve, which are not limited to geographic units but include also discrete ethnic, professional, occupational and behavioral groups. The NSS applications, the Project states, cannot be granted consistently with the requirement in Section 307(b) of the Communications Act that the Commission allocate frequencies, hours of operation and power so as to make a fair, efficient and equitable distribution of radio service to each of the several States and communities. In this regard, the Project argues, the Commission is obligated to require that the licensee serve all the communities within range of "broadcast" coverage, since various communities may be left without service, or be unable to afford the applicant's unregulated rate structure. The Commission has a duty to determine what types of services are to be afforded as well as to ensure that all significant communities are served, rather than leaving such determinations to private considerations of willingness to serve and ability to pay. Further the NSS applications should be denied on anti-trust grounds in view of the Hughes interest in the Hughes Sports Network, TelePrompTer, Theta Com, Theta Comm. of California, and the Hughes role as a manufacturer of communications and space-craft hardware. The NSS offer to permit access on an ability to pay principle does not cure these deficiencies, and is an infringement of the First Amendment rights of the public and petitioner. Further, the FCC approval of Hughes would have the effect of granting that company a license in perpetuity, and thereby confer upon Hughes effective ownership of the public airways, in violation of Section 301.

49. The Network Project requests the Commission either to deny Hughes or to make any grant to NSS subject to conditions that:

(a) Hughes provide as many earth stations and transponders as are needed for free and unrestricted public use.

(b) Programming reception be guaranteed to all cable television subscribers.

(c) Such public earth station channels and satellites be financed as necessary from revenues from Hughes commercial services, Hughes to bear costs of maintenance and to contribute 50% of revenues towards costs of public channel program production.

(d) Access to public channels be afforded according to number of signatures on particular proposal for use. The more signatures, more channels be afforded and Hughes to designate individual to distribute programming funds to authorized users in accordance with signature access procedure.

(e) FCC also initiate and hold hearings requiring Hughes to make a showing, to be tested by FCC, the Project and public, that ownership and operation would serve public interest, convenience and necessity.

50. On July 9, 1973, NSS filed an opposition to the petition to deny, claiming that the Network Project lacks standing, and that the petition to deny should be summarily dismissed as untimely filed and denied for lack of merit.

B. DISCUSSION AND CONCLUSIONS

51. In sum, NSS will employ its proposed system (i.e. that portion not used by GSAT and public broadcasting) primarily as a means by which it will distribute programming of various types to local cable television systems desiring to purchase such programming. Secondarily, it will make its satellite and reception facilities available on a contractual basis to others engaged in the sale and distribution of pro-

gramming to cable television systems. In the former context, NSS will function in a capacity similar to broadcast networks, but with the distinction that NSS will own and operate its own transmission facilities rather than leasing channels of transmission from communications common carriers. In the latter context, its facilities will be available to other program producers and/or distributors seeking to reach cable television systems throughout the country. However, the NSS offering will be a limited one in that it does not propose to lease an entire transponder to any given user for an extended period or to permit any single user to preempt any particular time period, during which period that facility would not be accessible to others as in the case of conventional common carrier offerings. In other words, NSS contemplates providing communications service to others in those circumstances where no other satellite system is available to meet a particular distribution requirement. And, in accordance with Commission policy, NSS states that all such users will be given a fair and equal opportunity to gain access to the NSS receive-only earth stations including, if necessary, use of the NSS satellite transponders. While this limited aspect of NSS's proposal may have certain characteristics similar to a communications common carrier for hire, we believe that, as proposed by NSS and subject to further experience, the NSS system does not warrant classification of the NSS operation in this limited secondary role as a common carrier undertaking. We further find that the NSS plan set forth in paragraph 46 above satisfactorily meets the requirement imposed by paragraph 32 of the *Second Report*.

52. In essence, the petition of the Network Project challenges the policy determinations long since settled in Docket No. 16495 or reflects a misunderstanding of those policies. The Commission determined in Docket No. 16495 that the public interest in the development of new and improved communications services by use of satellites would be served best by a policy of multiple entry to all qualified entities. It was the Commission's judgment that a broadly based satellite and earth station ownership policy would be most likely to bring about a diversity of economical and efficient service offerings to all segments of the public. A grant of the NSS applications will not mean that NSS has been given a monopoly in the area of distribution of programming to cable television systems via satellite.[9] Any other program supplier can distribute its programming to cable television systems by means of the common carrier facilities of other domestic satellite systems. Moreover, the cable television customer will be free to choose among the various offerings of all program distributors via satellite, and will be no more constrained in switching from one to another than it would be if NSS is not authorized. The NSS proposal is consistent with Commission policy that communications users should have available diverse means of meeting their varied and expanding communications requirements. The NSS proposal includes one means by which suppliers of programs can have access to those cable television systems that subscribe to their programming. While the NSS operation will not be in a common carrier mode, a similar

[9] Nor will NSS be given any permanent rights to the use of the frequencies. It has filed the waiver required by Section 304 of the Communications Act, and will be granted a license for a limited period of time, subject to application for renewal of license.

means of satisfying this communications requirement of program suppliers will be available from conventional common carriers owning domestic satellite system facilities. If all of the pending system applications are granted, at least four common carrier systems will be offering this type of service and each will have abundant capacity for such service. Thus, there will be no shortage of alternative common carrier means by which program suppliers can readily distribute their programs to cable television systems.

53. We further see no merit in the Project's contention that the NSS proposal would not provide a fair, efficient and equitable distribution of service to each of the several States and communities, within the meaning of Section 307(b) of the Communications Act. The only applications of NSS now before us are for the satellites, which will provide a signal covering every community in all fifty States. While NSS also has pending applications for seven receive-only earth stations, which it regards as representative from the standpoint of frequency coordination, its proposal contemplates more than a hundred receive-only earth stations to be owned by NSS. NSS will apply for such earth stations, which do not require such long lead time for construction as do the satellites, in due course. Moreover, NSS is willing to permit reception of its satellite transmissions by means of customer-owned receive-only earth stations. In the circumstances, there is no reason why the NSS program service cannot be received anywhere in the United States that there is demand for the service. Moreover, contrary to the contention of the Project, we see no warrant for the Commission itself to prescribe the customers to be served and the types of programming to be distributed. In the latter respect, it appears reasonable and in the public interest to afford NSS wide latitude for initial experimentation in the provision of this new service.

54. We also decline to condition a grant to NSS upon requirements that it afford the public access to its facilities without charge, and that NSS donate 50% of its profits from commercial sales to a program production fund for such public channels. We determined in the *Second Report* (35 FCC 2d at 859) that Hughes was bound to implement its voluntary offer to provide free facilities to the Corporation for Public Broadcasting, and the NSS application honors this commitment. We did not require NSS to provide free service to any other entity, and the Project has given no persuasive reason for broadening NSS's obligation now. As already indicated, other segments of the public will have ample common carrier services available for meeting their program distribution needs, and the question of whether such common carrier service should be provided on a free or reduced rate basis can be raised at an appropriate time by pleadings addressed to their operations.[10] (See *Second Report*, 35 FCC 2d at 859; *Memorandum Opinion and Order* of December 21, 1972, 38 FCC 2d, at 699–700.)

55. Finally, we reject the Project's claim that NSS should be disqualified on anti-trust grounds because of the Hughes ownership in-

[10] There is no occasion to initiate such a tariff proceeding here, since NSS will not operate as a common carrier. With respect to the contention that NSS should be required to donate half its profits to financing program production by others, we note that a proposal for a similar so-called "peoples dividend" was made by the Ford Foundation in Docket No. 16495, and was not adopted.

terest in the Hughes Sports Network, TelePrompTer Corporation, as well as for its dual role as a manufacturer of communications and spacecraft hardware. An identical contention was rejected by the Commission in Docket No. 16495 (34 FCC 1, 44–59; 35 FCC 2d at 851), and the Project has given no new reason for reaching a different conclusion here. We reaffirm our determination that Hughes is not disqualified on legal or policy grounds.

56. In sum, we are of the opinion that it would serve no useful purpose to hold an evidentiary hearing on the questions raised by the Network Project. We decline to designate the above-captioned applications of NSS for evidentiary hearing and will deny the petition of the Network Project.

III. Order

57. In light of all of the foregoing, we conclude that both GSAT and NSS are legally, technically, financially and otherwise qualified and that a grant of the above-captioned applications would serve the public interest, convenience and necessity. We find that GSAT has made a satisfactory showing as required by our *Second Report and Order* in Docket No. 16495 that the instant proposal will not be a burden or detriment to GE's services or to the interstate MTT network. Upon consideration of the environmental factors and predicted levels of radiation submitted by GSAT on June 29, 1973, we further find that GSAT has made a sufficient showing under paragraphs 94–95 of our Memorandum Opinion and Order released in Docket No. 16495 on December 22, 1972 (38 FCC 2d, at 703–704). Our authorization herein to GSAT is upon condition that it afford other domestic satellite licensees such access to get local loops and interexchange facilities on non-discriminatory terms and conditions as is necessary for the purpose of originating and terminating interstate services to their subscribers. We will hold GSAT to the same interconnection requirements as are found appropriate for AT&T and Bell System companies.[11] We will also require NSS to afford independent program producers access to the available program transmission capacity, whether leased or owned, on reasonable and non-discriminatory terms and conditions in accordance with a written commitment to be submitted to the Commission for its approval ninety days prior to the commencement of operations by NSS.

58. Accordingly, IT IS ORDERED, That the above-captioned applications of National Satellite Services, Inc. and GTE Satellite Corporation, ARE GRANTED to the extent specified herein and subject to the conditions set forth below:

(1) National Satellite Services, Inc. is authorized to construct three spin stabilized, 12 transponder satellites, in accordance with the specifications and parameters set forth in the applications and in the construction permits;

Provided, however, that the satellites authorized herein shall not be placed in orbit unless and until NSS, upon appropriate application therefor, has been authorized to do so by the Commission subject to such terms and conditions as it finds appropriate in the public interest. Such application shall be filed by NSS no later than 90 days prior to the anticipated launch date.

[11] We incorporate such findings herein by reference. (See our *Memorandum Opinion, Order and Authorization* of this date In the Matter of Applications of American Telephone and Telegraph Company, File Nos. 25, 26, 27, 29–DSE–P–71, and 20–DSE–P–73 —— FCC 2d ——.)

Construction of the satellites authorized herein shall be completed in accordance with the specifications listed in the applications and construction permits no later than 24 months after the date of issuance of this authorization, and failure to complete such construction within such time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission for good cause shown.

(2) GTE Satellite Corporation is authorized to construct five earth stations in Hawaii, California, Indiana, Florida and Indiantown Gap, Pennsylvania in accordance with the following technical specifications:

3 kw, 6 GHz transmitters, 5925–6425 MHz;
30 meter diameter antennas;
92 dBW maximum main beam E.I.R.P.;
45K receiving system noise temperature
Emission 36,000F9 maximum;
receive frequencies 3700–4200 MHz;

and as otherwise described in the applications of GSAT and in the construction permits. Such construction shall be completed no later than 24 months after the date of issuance of this authorization, and failure to complete such construction within this time period shall result in automatic forfeiture of this authorization unless such construction period is extended by the Commission for good cause shown.

(3) The authorization to NSS is upon condition that it afford other independent program suppliers reasonable and non-discriminatory access to the available program transmission capacity, whether leased or owned, on reasonable and non-discriminatory terms and conditions as approved by the Commission (see para. 57).

(4) GSAT shall afford other space segment and earth station licensees such access to the GTE local loop and interexchange facilities as is necessary for the origination and termination of the interstate services to subscribers on terms and conditions no less favorable than those required to apply to AT&T and the Bell System Companies.

(5) GSAT shall, in conjunction with AT&T and its connecting carrier in Hawaii, submit within six months from the effective date of this authorization a specific proposal for the integration of rates for service to Hawaii in the interstate MTT rate pattern, for review and approval by the Commission prior to the commencements of any operations by GSAT. In addition, jurisdiction is retained to implement our policy with respect to the integration of rates for classes of service other than MTT which GSAT is now or may hereafter be authorized to provide to and from Hawaii.

(6) The authorization to GSAT is upon the further condition that GSAT shall submit such periodic reports with respect to its domestic satellite operations as may be required by further order of the Chief, Common Carrier Bureau, to assist our evaluation of its domestic satellite system vis-a-vis the Long Line facilities and operations of AT&T.

(7) The authorization to NSS is upon condition that it afford its cable television customers the option of owning receive-only earth stations to obtain the NSS program offering and that of any independent program supplier offered by means of NSS facilities, in whole or in part.

59. IT IS FURTHER ORDERED That the relief requested in the comments filed by AT&T and in the petition of the Network Project IS DENIED.

60. IT IS FURTHER ORDERED That the proceeding in Docket No. 19812 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

STATEMENT OF CHAIRMAN BURCH IN WHICH COMMISSIONER JOHNSON JOINS

In deciding to authorize the domestic satellite system proposed by General Telephone and Electronics, and thus an expanded role for

GT&E in the planning and operation of the domestic long lines network, the Commission has set aside what many consider to be a fundamental precept of network operation and control. In fairness to the parties directly involved (GT&E and AT&T), their stockholders, and above all their ratepaying customers, I believe that some explanation of the rationale for that decision, above and beyond the formal language of the Commission's order, is called for.

Historically, the Long Lines Department of AT&T has planned, owned, and operated nearly all the network of transmission and control facilities used to interconnect both Bell operating companies and independent telephone companies, to provide an integrated long distance telephone service. I have no reason to doubt the dedication with which Bell has performed this task. Indeed, I like to believe this exclusive reliance on Bell facilities is primarily the result of sound operational and economic considerations within the communications industry itself, and not merely the result of government fiat. Regrettably, in this imperfect world of regulated communications monopolies, where the heavy hand of government bureaucracy is often asked to supplant Adam Smith's invisible hand of competition, such beliefs are difficult to sustain.

In this proceeding General Telephone and Electronics, a supplier of telephone services to some 12 million non-Bell customers, has challenged Bell's exclusive role in long lines operation, through its proposal to establish and operate a GT&E domestic satellite system as part of the integrated long lines telephone network. Again, I would like to believe this reflects sound operational and economic considerations on the part of GT&E. Again, the economic distortions and disincentives built into the very fabric of these regulated industries provide no such assurance. Both AT&T and GT&E are virtually guaranteed a profit on whatever investments they make, which encourages both to seek ownership of as much of the long lines network as the Commission will allow.

Communications satellite technology presents many new and varied opportunities for providing long lines services. Both AT&T and GT&E have advanced plans for using this technology in the long lines network, and both have claimed advantages for their respective approaches. The basic policy issue this poses for the Commission is whether, in this era of expanding technological developments and opportunities, we should continue by fiat to rely exclusively on Bell to provide these services; or whether the added perspective of another operating telephone company such as GT&E might result either now or in the future in tangible public benefits, such as lower costs, more rapid innovation in technology and services, greater visibility of regulatory issues and options, etc.

The parties at interest have addressed themselves to this question in voluminous filings and oral arguments before the Commission. They have attempted, in what I believe to be a good faith effort, either to prove or disprove the notion that the GT&E system *per se* is cost-effective in terms of GT&E traffic requirements and/or overall network operation. They have also attempted to show how this either does or does not threaten a major fragmentation and disruption of the planning and operation of this integrated network.

In all candor, I do not find any of these economic or operational arguments sufficiently persuasive to serve as a definitive basis for this decision. Depending on the perspective from which one enters this debate, one can apparently "prove" or "disprove" the economic viability or comparative advantages and disadvantages of both the AT&T and GT&E approaches to satellite utilization. The complexities of cost allocation, different approaches to network routing and operation, and somewhat different uses of available satellite technology, simply do not permit of unequivocal cost and operational comparisons. One party's alternate route is another's excess capacity, and vice versa; one party's innovative idea is another's potential network harm; and so it goes. And, since only AT&T is now in a position to specify routing plans and options, to establish fill rates and quotas, to identify and highlight potential operational problems or harms, and to make cost allocations among various network operations, the debate is unavoidably framed in the context of AT&T's perspective.

In these circumstances, the Commission has been compelled to decide the basic policy issue of GSAT's authorization on fundamental principles. In my case, the overriding principle is that which guides our basic political and economic system: unless there are overwhelming public interest reasons for limiting the freedom of individuals or firms to pursue their own political, social and economic objectives, based on their own best judgments, such limitations should be rejected.

In the case of the GT&E proposal, I find no such overwhelming public interest objections. GT&E is a responsible and competent telephone operating company. As the ultimate supplier of telephone services to some 12 million members of the public in several widely separated regions of the United States, it has a valid and legitimate interest in the planning and operation of the nationwide network and a valid claim to effective participation in these processes. The proposed GT&E system is self-limited in scope and in economic risk to the public; it is designed to carry primarily traffic to and from GT&E operating areas, and thus will constitute only a small fraction of the total interstate network.

Admittedly, the GT&E system does not promise—or threaten—to compete with the Bell System in the classical sense, but rather to complement that system. Even so, there is reason to expect that the stimulus provided by having more than one responsible party involved in the planning and operation of this network will produce beneficial innovations. To deny the GT&E application would be to consign to the Bell System exclusively—and perhaps forever—responsibility for the development and use of satellite technology in one of the largest and most important of our communications services—the public message telephone service. Given the long-term implications of such a course, and the limited downside risk of the GT&E proposal, I believe a decision to authorize the GT&E system is in the public interest.

As noted, I have not been convinced by the comparative cost and related economic data presented by either party, nor by their public interest arguments. I am also concerned over the fact that GT&E can expect to realize a return on its investment almost irrespective of its operational effectiveness or economic efficiency—as indeed can Bell. This could motivate GT&E simply to enjoy the good life provided by

its expanded network role. Finally, I am concerned over the possibility that this necessarily cooperative arrangement between AT&T and GT&E might devolve into petty rivalry before the Commission rather than a stimulating discourse betweeen the parties.

In short, I am not *certain* that the GT&E system will prove to be operationally effective and efficient, or that the additional perspective of GT&E will in fact contribute significantly to improved planning and operation of the long lines network. But certainty about future actions and results is not characteristic of a free society or of a free enterprise economy. I am willing to accept a measure of uncertainty in this case in exchange for at least the *possibility* of some public benefits, rather than the peaceful certainty which comes from entrusting these responsibilities exclusively to a single firm—whatever the dedication of that firm to *its* concept of the public interest.

This is not a foot-in-the-door policy or necessarily a policy for all time. Even with its substantial traffic volumes and revenue-producing capability, the decision to authorize the GT&E system was not easily reached. I can think of no other firm which could even come close to justifying the establishment of a domestic satellite system—or indeed any other long lines system—to be used in the switched message telephone network.

The Commission cannot, of course, rest on its laurels following this decision. So long as this industry is organized along monopoly or oligopoly lines, without the built-in checks and balances of competition, even the introduction of additional suppliers requires close and continuing scrutiny. Accordingly, I feel the Commission must treat the GSAT system as a trial operation, and must continue to assess its operational and economic viability as well as its "yardstick" role in comparison with Bell satellite activities.

The Commission—and the Bell System—should afford GT&E time and opportunity, during the life of this initial system, to demonstrate that discernible public benefits and not merely private benefits to GT&E will indeed accrue from this expanded role in long lines planning and operation.

Separate Statement of Commissioner H. Rex Lee

I support the decision to approve the domestic satellite system proposals of GTE Satellite Corporation (GSAT) and National Satellite Services, Inc. (NSS).[1] GSAT proposes to provide interstate message toll telephone service (MTT) and private line services by means of satellite facilities leased from NSS and earth stations owned by GSAT. NSS intends to use the remainder of its satellite capacity to provide free interconnection service for public broadcasting and to develop a private program distribution service for the cable television industry.[2]

In its *Second Report and Order in Docket No. 16495*, 35 FCC 2d 844 (1972), the Commission addressed the question of whether GSAT

[1] After the release of the Commission's *Second Report and Order in Docket No. 16495*, GTE Service Corporation formed a separate corporate subsidiary to engage in domestic satellite operations and transferred its pending applications to this new entity, GSAT. In similar fashion, Hughes Aircraft Company formed a separate corporate subsidiary, NSS, to pursue its domestic satellite proposal.

[2] The proposals of GSAT and NSS are interdependent in that NSS states that it cannot proceed with its application if the GSAT proposal is not authorized by the Commission.

should be authorized to provide interstate MTT service via domestic satellite facilities in the context of its policy goals. The Commission specifically noted that, in encouraging multiple entry and competition in the supply of domestic communications, it has maintained a distinction between the monopoly switched telephone services now being furnished by the American Telephone and Telegraph Company and all other classes of existing and potential specialized services. The distinction has not been made in order to protect AT&T's position in the provision of MTT service, but, rather, the Commission's purpose has been to protect the public interest in the continued availability of an efficient and economic MTT service, which might be adversely affected by fragmenting the responsibility for the planning and provision of interstate transmission facilities. Nevertheless, the Commission indicated that GSAT's proposal to depart from this established scheme should not be rejected outright and should be seriously considered if it proves to be economically and technically feasible and to offer significant public benefits. In spite of the Commission's determination that the GSAT proposal does offer several potential advantages, it pointed to a number of uncertainties which required the submission of a supplemental showing by the applicants concerning the following questions: (1) what potential benefits might be achieved by affording GSAT access to the satellite technology for the provision of MTT service; (2) whether the GSAT proposal is economically justified in terms of anticipated costs and prospective satellite fill; (3) what effect the proposal will have on existing settlement arrangements between GTE and AT&T; (4) what plans GSAT has for handling traffic in case of temporary outages or catastrophic failure of its satellite system facilities; (5) how satellite costs will be treated for rate making and accounting purposes; and (6) what kinds of data will GSAT gather and report to the Commission to assist in its evaluation of the efficiency and economy of authorized operations as compared to exclusive reliance on the interstate facilities of AT&T.

Based upon the information submitted by the applicants, I am convinced that the GSAT/NSS domestic satellite proposal is technically feasible and economically viable, can provide valuable benefits to the public and will not adversely affect the integrity of the MTT network or GTE's other common carrier services. The GSAT proposal, like that of AT&T, would establish a satellite system to supply basic switched voice telephone service and eventually private line and other specialized services. GSAT plans to integrate its proposed system in a manner that is complementary to AT&T's existing terrestrial and proposed satellite facilities, serving high-density routes between major metropolitan areas—it would serve GTE operating companies who currently provide local and interstate communications services to eleven million subscribers and its system would be filled by essentially growth traffic between medium-sized metropolitan areas, which plan would not require the deloading of existing circuits on ATT's terrestrial facilities. Of course, special attention must be paid by the Commission to any plan that would affect users of the MTT service since a satellite system investment by a common carrier would become part of the carrier's rate base and would impact on revenue requirements for voice telephone services.

However, the GSAT traffic forecasts adequately demonstrate that the proposed system will carry sufficient MTT traffic to produce revenues in excess of costs and that the satellite system will not place an undue economic burden on nationwide MTT revenue requirements. In this regard, AT&T claims that, on a comparative basis, the GSAT system will involve higher per circuit satellite costs than the AT&T proposal. But, any attempt at comparative cost analysis is tenuous at best since the GSAT and AT&T proposals are designed to serve different localities and traffic centers with different system configurations and the resulting cost calculations are based on different assumptions about traffic availability, traffic growth and routing, the interplay of satellite and landline facilities, etc. Moreover, the satellite proposals do not encompass complete communications systems—each relies to a greater or less extent on the supply of landline facilities which will interface with the satellite systems and will have varying cost implications. As a result, costs cannot be adequately compared here where the system proposals are based on particular communications markets to be served and specific methods for serving those markets. Even AT&T itself recognizes the inherent difficulty of formulating direct cost comparisons of system proposals, and it can be expected that further revisions in cost estimates will occur before the satellite systems become operational. The ultimate test, of course, lies in the experience and information gathered as a result of actual costs incurred by the completed systems. In the meantime, it appears that sufficient long-distance network traffic can be generated by GTE operating companies to load the proposed satellite facilities efficiently and that the satellite facilities will be cost effective in the near term and will not impose any substantial economic burden on the MTT network.

Also, certain benefits can be expected to flow from authorization of the GSAT system. It will introduce another responsible party into the management of the nationwide MTT network, which could lead to improvements in the planning and implementation of interstate facilities. While there is no question that the current efficiency and economy of the nationwide network has resulted from the unified operation of the Bell System in planning, developing and installing high-capacity transmission facilities, the fact remains that GSAT is probably the only entity with sufficient network telephone traffic to enable an economic sharing of interstate facilities with AT&T and that network planning and implementation have been coordinated with GTE operating companies for some time. In addition, the GSAT system will provide a basis for the regulatory comparison of the relative efficiencies and cost advantages of different technologies and of system performance. I do not mean to downgrade AT&T's efforts in this regard, for the Bell System has demonstrated a high degree of competence in improving the efficiency of the MTT network and in benefitting telephone users thereby. In fact, I believe that AT&T has developed the most efficient telephone system in the world. However, the GSAT system will provide a unique opportunity to test the relative efficiencies of different technologies in the provision of network service. If it should develop that, contrary to expectations, the GSAT system does impinge on the integrity of the MTT network, the Commission is

prepared to assess the need for corrective action. For that very reason, the GSAT authorization has been conditioned on the submission of periodic reports with respect to settlement and operating arrangements between GSAT and AT&T and the distribution of traffic handled over the MTT network involving the GSAT system, including cost data and information on outages, delays, etc.

The presence of GSAT will also permit a sharing of capital costs involved in major facility improvements for the MTT network at a time when AT&T is faced with the task of raising necessary funds in a difficult economic environment. GSAT's participation, moreover, will mean that AT&T will not be placed in the position of solely determining the proper role of satellite technology in the provision of long-lines transmission facilities. Finally, the GSAT proposal to integrate Hawaii directly with northeast and midwest Mainland earth stations and thereby to eliminate terrestrial transmission across the United States Mainland is compatible with the Commission's announced policy objective of treating Hawaii as a domestic point in the provision of communications services. In the process, the proposal fully exploits the distance-insensitive features of satellite transmissions and brings us closer to the day when Hawaii-Mainland traffic is an integral part of the interstate rate pattern.

Therefore, the GSAT/NSS system proposal serves our basic policy objectives in the domestic satellite field and may result in increased innovation in the provision of MTT network facilities. In such circumstances, I endorse our authorization of the GSAT/NSS domestic satellite system proposal.

SEPARATE STATEMENT OF COMMISSIONER CHARLOTTE T. REID

I concur with the result in part (to the authorization to provide service) and dissent in part (to paragraph 41 of the Memorandum Opinion and Order, delegating certain authority to the Chief of the Common Carrier Bureau).

I concurred in the result solely on the basis of the facts presented by GSAT to the Commission that they would provide an experimental mode of transmission service involving its growth traffic and that they would take *no* steps which would be detrimental to the MTT service now being provided by AT&T. I was not completely convinced of their ability to serve without affecting MTT, but I did concur in order to give GSAT the opportunity to substantiate the claims which they made to the Commission.

The Commission's basic concern in the public interest must be to assure a standard of service and should any action by GSAT show a contrary effect upon this service or not appear to be in the public interest, I believe we are duty bound to respond accordingly.

I dissent to paragraph 41 of the Memorandum Opinion and Order because I believe this type of delegation, where the Commission is trying to gain information in *a new service*, is not in the best interests. The Commission should be involved in the determination as to the information we are seeking and how we should best proceed to acquire it. I believe we have.

CONCURRING STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS

The decision here is momentous in miniature in that it represents a dramatic departure from the "natural monopoly" theory underlying AT&T's control of the nation's long distance telephone network. Under that theory, one entity plans, builds and operates the exceedingly intricate network of hauling and switching facilities composing our interstate telephone system, thus avoiding the ineconomies of duplicate planning, marketing and facilities as well as a type of "destructive" competition [1] while realizing the economies of scale. Moreover, it is theorized, unitary ownership of all facilities mitigates against inefficient operation since there is no incentive to favor one route or type of facility since the same party owns them all; hence, the party, spurred by the profit motive, would handle traffic in the most economic, efficient manner. If the "natural monopoly" theory is faulty, there are many methods and entrepreneurs ready to supplant it.

Without pointing to specific deficiencies in AT&T's monopoly MTS operations or—at this point—probatively demonstrating that it can improve on AT&T's rates or services, GTE, a distinguished and experienced operator of local telephone companies, has unselfconsciously requested that the Commission slice off a segment of AT&T's long-haul traffic and transfer it to them. GTE will not compete with AT&T in any sense of the word since the traffic is already present and the public neither knows nor cares what corporate logo is inscribed on the satellite transmitting the message. The costs are not likely to be much altered and GTE gets a set rate of return (8½%–9%) on a going and lucrative business with very little risk.

Despite the fact that the record before us is devoid of any tangible showing of public interest benefits inuring from a grant of GTE's proposal, we nonetheless do so based almost on pure speculation—both optimistic and pessimistic. The optimistic aspect is premised on the hope that the infusion of another entity into long-haul operations will result in improvements in technology, service, and costs; the pessimistic aspect, embodied in the obverse of that proposition, is that AT&T may be inefficiently handling long distance messages and the inclusion of another entity, serving the watchdog role of a voracious competitor, will compel AT&T to tighten up. Additionally, unspoken, but inflected in the decision is an oblique reminder that AT&T was not divinely ordained as a national public service for handling long distance telephone toll calls.

My problem is that I do not consider the above bases to reflect sound regulatory principles. Number one, our decisions should be grounded on some palpable evidence of ensuing public interest benefits, not on some vague assertion that benefits, as yet undescribed and speculative, could possibly result. In this case, it is the public's money we are speculating with and no real assurance to support us. Second, it is my belief that it is the Commission's job—not a profit seeking competitor's—to ensure that a regulated company is employing its assets to best ad-

[1] That is, a particularly wasteful variety of non-price competition indigeneous to rate-regulated industries whereby capital expenditures—on which a rate of return is paid—are made to induce use of the product of one competitor over another although the essential services are virtually indistinguishable.

vantage. If we suspect performance inefficiency and are seeking a yardstick, let's use our own rather than gauge by comparison to another profit inspired business which—even if more or less efficient than AT&T—still tells us nothing about AT&T since their respective propositions are not remotely comparable. If satisfactory monitoring of AT&T for possible excesses mandates increasing Commission resources, then those resources should be sought since we are expected to satisfactorily execute our regulatory obligations. And, finally, I wish to make crystal clear that this concurrence is not an indication that I consider corporate "bigness", *ipso facto*, as synonomous with malevolence or inefficiency; if big can provide the best service at the lowest costs, then as far as I'm concerned, big is beautiful.

It is only because I cannot categorically state that no improvement over AT&T's methods are possible—the spectrum of possibility being infinite—and not out of any comfortable sense of conviction that I hesitantly accept the wisdom of the majority which has years of cumulative experience in common carrier regulation, and concur. While I wish GTE success, I am skeptical about the realization of public benefits or of a means by which to assess whether or not they have accrued.

F.C.C. 73-1179

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by
HOOSIER TELECABLE CORP., PERU, IND.
For Special Temporary Authority

NOVEMBER 14, 1973.

JOHN I. DAVIS, ESQ.,
Dow, Lohnes & Albertson,
1225 Connecticut Avenue,
Washington, D.C. 20036

DEAR MR. DAVIS: On October 17, 1973, you filed an "Application for Certificate of Compliance and for Special Temporary Authority" (CAC-3149, CAC-3150, CAC-3151) on behalf of Hoosier Telecable Corporation, operator of cable television systems at Peru, Grissom Air Force Base, and Miami County, Indiana. As amended, Hoosier Telecable's pleadings seek authority to carry the signal of Station WLFI-TV, Lafayette, Indiana, on the above-mentioned cable systems until action can be taken on the captioned applications for Certificates of Compliance.

In support of its request, Hoosier Telecable alleges that each of its systems is located outside of all television markets, but within the predicted Grade B contour of Station WLFI-TV. As a result, Station WLFI-TV is entitled to carriage on the subject systems pursuant to Section 76.57(a)(1) of the Commission's Rules. The licensee of Station WLFI-TV submitted a letter on October 30, 1973, expressing support of Hoosier Telecable's request for special temporary authority insofar as it would allow immediate carriage of Station WLFI-TV. While Station WLFI-TV has been in existence for a number of years, it recently made substantial improvements in its facilities, transferring operations to a different site with a new transmitter and antenna. These modifications have made Station WLFI-TV a "must-carry" signal on the subject systems. These systems serve over 6,000 subscribers whose cable hookups preclude over-the-air viewing of Station WLFI-TV.

In these circumstances, the Commission herewith waives Section 76.11 of the Commission's Rules to allow immediate carriage of Station WLFI-TV by the above-listed cable television systems operated by Hoosier Telecable Corporation. This authorization will expire for each system fifteen (15) days after final Commission action on its pending applications for Certificates of Compliance.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1199

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	Docket No. 19660 RM-690

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 26, 1973)

BY THE COMMISSION:

1. On October 30, 1973 the Commission issued an Order (FCC 73-1103) herein instituting an expedited hearing on the entire matter of the request of The Western Union Telegraph Company (WU) for an increase in the currently prescribed division of charges received by it for the landline handling of outbound and inbound international telegraph message traffic. We indicated in said Order that the hearing would be upon issues to be specified by further order. In furtherance of our desire for an expedited hearing, the Chief, Common Carrier Bureau, requested the interested parties to submit statements outlining with specificity what they believe to be the relevant issues upon which evidence should be adduced, and such views as might best conduce to an orderly and expeditious hearing. In response thereto, WU, ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), TRT Telecommunications Corporation (TRT) and Western Union International, Inc. (WUI) filed written statements.

2. The views of the parties as to the issues to be included herein, in some respects involve broad considerations of the relationships between domestic and international telegraph operations. For example, it is recommended that inquiry be made into such matters as a re-evaluation of the methods and practices involved in the pickup and delivery of international traffic originating at or delivered to hinterland points outside the established gateway cities; the possibility of providing WU's telex and TWX subscribers free direct access to the international record carriers; whether WU should be permitted or required to phase out of the landline handling of international message traffic; and, whether WU's present procedures for routing international telegraph message traffic are unduly circuitous and uneconomical. For the most part, however, the issues recommended by the parties relate primarily to what changes, if any, in the current division of charges are justified in light of WU's revenues, expenses and investment in the landine handling of international message traffic and the impact,

if any, such increases would have upon the revenues, rates of return and traffic volumes of the international carriers. It is within this latter area of concern that our determination to designate for hearing WU's request for an increase in landline divisions of charges was largely influenced. The recommendations of the parties in this regard have been most helpful in delineating the relevant areas of inquiry raised by WU's request for relief. Insofar as the wide-ranging issues suggested by some of the parties are concerned, we believe they can be more adequately and appropriately addressed in separate proceedings and that any final action herein will not prejudice our ability to fully and fairly consider them within their proper context.

3. Upon careful consideration of the various views of the parties and all other matters of record, we have determined that the need, if any, for increases in the current divisions of charges requires inquiry not only into Western Union's revenues, expenses and investment related to the landline handling of international telegraph messages, but also into the reciprocal impact of any such increase on the revenues, rates of return, and traffic volumes of the respondent international carriers. However, to minimize delay, and at the same time avoid any unnecessary hearings, we shall require that the presiding Administrative Law Judge, at the conclusion of the landline portion of the proceeding, issue an interim decision on the need, if any, of Western Union for increases in divisions. In the event such decision concludes that increases are warranted, the hearings will continue on the international aspect of the proceeding. However, no increases in divisions of charges, if found to be warranted, shall be prescribed prior to final action on all of the designated issues, unless otherwise ordered by the Commission on good cause shown.

Accordingly, IT IS ORDERED, pursuant to Sections 202, 204 and 205 of the Communications Act, in addition to those sections mentioned in the order herein released October 30, 1973, that the hearing shall be upon the following issues:

(a) Whether the current divisions of charges between Western Union and the respondent international record carriers for the landline handling by Western Union within the Continental United States of outbound and inbound international telegraph message traffic is unjust, unreasonable, inequitable, or otherwise not in the public interest.

(b) In connection with (a) above—

(1) What are the revenues, expenses and investment properly attributable to the landline handling by Western Union of international telegraph messages, both currently and for a reasonable future period of at least one year?

(2) On the basis of (b)(1) above, what changes, if any, in the levels and structure of the current divisions of charges are required to meet Western Union's revenue requirements for the period mentioned in (b)(1) above?

(c) What are, or will be, the effects of any increases in the divisions of charges that may be found to be required under (b)(2) above, on the revenues and rates of return of the respondent international carriers, assuming that such increases are absorbed by them?

(d) Whether the effect of any increases on the respondent international carriers is such as to warrant an increase in international public message charges to the public and, if so, the amount or amounts thereof and the effect of such increases on the volume of international message traffic and the revenues resulting therefrom both to Western Union and the respondent international record carriers.

(e) On the basis of findings and conclusions reached on the above issues, what changes, if any, in the current divisions of charges and/or charges to the public, should be prescribed by the Commission which will be just, reasonable and in the public interest?

IT IS FURTHER ORDERED, that the presiding Administrative Law Judge shall, upon completion of the taking of evidence on issues (a) and (b) (1) and (2), prepare an interim decision which shall be subject to exceptions and requests for oral argument as provided in 47 C.F.R. 1.276 and 1.277 after which the Commission shall issue its decision as provided in 47 C.F.R. 1.282, provided however, that should the interim decision of the presiding Administrative Law Judge conclude that changes in the current divisions of charges are warranted, evidence shall be taken promptly on issues (c), (d) and (e) and, provided further, that no increases in divisions of charges, found to be warranted, shall be prescribed prior to final Commission action on all of the issues designated herein, unless otherwise ordered by the Commission on good cause shown.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1203

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of INTERNATIONAL RECORD CARRIERS' SCOPE OF OPERATIONS IN THE CONTINENTAL UNITED STATES, INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT	Docket No. 19660 RM-690

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 26, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT; COMMISSIONER REID CONCURRING IN THE RESULT.

1. The Commission has before it for consideration (a) a petition for rulemaking filed by ITT World Communications Inc. (ITT) under Section 222(e)(3) of the Communications Act seeking changes to the formula for distribution of outbound international messages (formula);[1] (b) comments on that petition filed by RCA Global Communications, Inc. (RCA), Western Union International, Inc. (WUI), TRT Telecommunications Corp. (TRT), French Telegraph Cable Co. (French Cable), Canadian National Railway Co. (CNR), Canadian Pacific, Ltd. (CPL) and The Western Union Telegraph Co. (WU); (c) a reply filed by ITT; and (d) supplementary comments filed, in response to a request of the Chief, Common Carrier Bureau, by RCA, WUI, French Cable, TRT, CPL and WU amplifying the positions taken in their originally filed comments. The ITT petition alleges that the formula, as presently written, is anachronistic and no longer provides a distribution among the international record carriers (IRC's) of outbound international message traffic which is just, reasonable, or equitable in the public interest. The petition further requests the Commission thoroughly to review the workings of the formula and to prescribe a new formula which will be eqiutable to all parties.

2. The present dispute centers around the formula developed pursuant to Section 222(e)(1) of the Communications Act. That section provides that

> the consolidated or merged carrier [WU] shall . . . distribute among the international telegraph carriers, telegraph traffic by wire or radio destined to points without the continental United States. . . . in accordance with such just, reasonable, and equi-

[1] As originally filed, the petition was denominated a "complaint" in accordance with the language of Section 222(e)(3). However, since it involved a request for a change in the formula, which is a "rule" within the meaning of § 551(4) of the Administrative Procedure Act, 5 U.S.C. § 551 (1971), it was treated as a petition for rulemaking and assigned the file number RM-690. For simplicity, the complaint will be referred to herein as a petition for rulemaking or petition.

> table formula in the public interest as the interested carriers shall agree upon and the Commission shall approve . . . 47 U.S.C. § 222(e)(1) (1970).

The question before us is whether the formula currently in effect, which was initially prescribed by the Commission in 1943, is now outmoded. Section 222(e)(3) provides that the formula may be revised whenever, upon a complaint or upon its own motion and after a full hearing, the Commission determines that the formula no longer operates so as to fulfill the statutory requirements. We believe that the ITT petition and associated pleadings make a *prima facie* showing that the current formula is or will be unjust, unreasonable, or inequitable and thus not in the public interest.

3. Section 222 was enacted in 1943 to permit the merger of WU and The Postal Telegraph Cable Co. (Postal). As a result of the merger, WU would become the sole domestic telegraph carrier with an extensive landline network.[2] Congress feared that this would put WU in a position where it could favor its own international division (WU Cables) over the independent IRC's with respect to traffic originating in the hinterland. Therefore, the section included a provision requiring WU to divest itself of its cable division. Since divestment was not made a pre-condition of the merger, WU would continue its international operations until such time as a purchaser for them was found. Section 222(e) was included to provide a method for insuring fair distribution among the IRC's of outbound international message traffic by WU, avoiding favoritism of either its own cable division pending divestment or another carrier. We approved the merger application on September 27, 1943, 10 F.C.C. 148 (Docket 6517), and issued an accompanying "Separate Report of the Commission on Formulas for the Distribution of International Traffic," 10 F.C.C. 184. In this document, we adopted a method of distribution which, with some modifications,[3] remains in effect today.

4. The formula, which is set forth in the attached Appendix, provides generally that each IRC should receive from WU a sufficient number of unrouted[4] international messages so that the gross international tolls such IRC would receive from all traffic (routed as well as unrouted) destined to a particular geographical sub-area[5] would accord with that carrier's proportionate share of the total tolls to each subarea during the base year.[6] An IRC is given a quota of messages, taking into consideration not only the number but also the length of

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[2] There was a limited IRC domestic message service prior to World War II. However, during the war, the War Communications Board ordered those operations terminated for reasons of national security, and they were never resumed.

[3] In 1961, in connection with the WU divestment, we modified the formula to substitute WUI for WU Cables division and to reflect the fact that thereafter WUI would be an independent IRC.

[4] A customer sending an outbound international telegram via WU may either specify the international carrier he wishes to handle the message (a "routed" telegram) or merely file the message with WU without further direction (an "unrouted" message). The formula, which provides in Section III that specific routings are to be honored, was designed to provide a fair distribution of total message traffic.

[5] The formula created three Areas: (1) Area "A" (Atlantic), (2) Area "B" (Latin America) and (3) Area "C" (Pacific). Each area is divided into "Subareas" to cover specific countries and territories.

[6] The "base year" under the formula is, generally, 1942 (the last full year prior to the merger). The formula, however, provided that where service to a country within a subarea of Areas A or C had been interrupted by the war, the base period for determination of quotas would be the last twelve-month period prior to the interruption in which all interested IRC's were normally handling traffic to that country.

the messages, to the geographical areas it was authorized to serve in 1942 that would achieve the general goal of the formula. In the event that the messages turned over in any month do not fulfill a carrier's quota, the formula provides for that carrier an increased number of messages to assure that its quota is met thereafter. Day-to-day administration of the formula is conducted by the International Formula Committee, made up of representatives of the interested IRC's, which issues, through its staff the International Quota Bureau, instructions to WU directing it to distribute unrouted messages. We have the responsibility to oversee the operation of the formula as a whole and to assure that it continues to serve the public interest.

5. In 1961 we approved a plan under which the American Securities Corp. would purchase the WU Cables division and operate it as an independent IRC under the corporate name of Western Union International, Inc.[7] With the consummation of divestment in 1963, WU was no longer in a position where it could favor its own international operations. At that time, we approved certain modifications to the formula to reflect the effect of the divestment. However, we did not engage in a thoroughgoing review of the formula or make any structural revisions.

6. In December 1972, in Docket No. 19660, we initiated a general inquiry into the relationship between WU and the IRC's.[8] Among the matters included in that inquiry is the ITT petition at issue herein. This investigation arose from a series of interrelated filings bearing on the general question of the interface between the domestic and international telegraph fields. At the time we instituted this docket, we stated our belief that these matters would best be considered together. However, in view of the developments which have taken place since we instituted Docket No. 19660, it now appears that the best and most expeditious course is for us to consider further the ITT petition and associated responses separately at this time.

7. In its petition, ITT isolated three aspects of the present formula which it claims need correction: (1) the quota system; (2) "Schedule B"; and (3) the gateway concept. With respect to the quota system, ITT alleges that the technical, operational, and corporate changes which have occurred in the international message industry since 1943 have made it anachronistic. Under the formula, the quotas are designed to preserve each IRC's relative market share at its 1942 or earlier level. ITT notes that, although the present structure was arguably necessary to prevent WU from favoring its cable division, its continued validity is doubtful because the divestment of that division has put WU in a position where it can no longer so favor itself. More fundamentally, however, ITT charges that the existence of sizeable "deficiencies" and "overages," [9] and the fact that the formula provides

[7] 30 F.C.C. 323 (Docket No. 6517) (1961).
[8] 38 F.C.C. 2d 548 (1972).
[9] The amount of unrouted traffic due a carrier under its quota is affected by the amount of routed traffic it carries to a particular geographical subarea. If, through specifically-routed traffic alone, a carrier exceeds its quota for any category of traffic to a subarea (defined as an "overage") the formula calls for unrouted traffic to be withheld from that carrier in other categories so as to balance off the excess. Similarly, when unrouted traffic turned over to a carrier, when added to routed traffic, is insufficient to satisfy its quota to any subarea (a "deficiency"), it is to receive increased amounts of unrouted traffic thereafter until its deficiency is eliminated. ITT included figures in its petition to show that, on an overall basis, it and WUI were in an overage position, with RCA and others

no way to eliminate them, indicate a basic weakness which should be corrected. ITT also challenges the continued validity of "Schedule B" to the formula. Under this provision, WU agreed to give RCA certain amounts of traffic taken from its quotas to subareas of Area A (Atlantic).

ITT characterizes this agreement as a "gift," which was made to compensate RCA for its pre-merger lack of access to a domestic landline system,[10] and argues that any disadvantage RCA suffered must be considered to have been redressed in the time since the formula was instituted. Finally, ITT believes that, in connection with a review of the formula, the "gateway" [11] concept should be modified to reflect more accurately modern operating techniques, such as automatic switching, which permit handling to and from any point in the United States, without processing at present gateways, as contrasted with the IRC's manual handling of messages at gateways in 1943. In view of this, ITT believes gateway cities, which were tied to old operating limitations, should not be restricted to those currently authorized. ITT requests that, after hearing, the Commission revise the formula to meet modern conditions, including:

a) cancellation of all existing overages and deficiencies;
b) ordering WU to turn over unrouted traffic equally to all IRC's authorized to serve the point of destination;
c) cancellation of the quotas for the Canadian carriers under appendix 2 to the formula;[12]
d) ordering WU to turn over all routed traffic to the carrier of the sender's choice without any regard to the distribution of unrouted traffic, if it can carry the traffic out of the country;
e) prescribing that gateway traffic originated by an IRC itself should have no bearing on the distribution of outbound unrouted traffic.
f) cancellation of Schedule B of the formula; and
g) upon revision of the formula, abolition of gateway quotas and distribution of unrouted traffic filed with WU equally among the IRC's, allowing the IRC's to operate in "new" "gateway" cities upon an appropriate Section 214 finding.

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in a deficit position. RCA was also in a deficit position with respect to Schedule B traffic. ITT argues that to the extent a carrier strives to increase its routed traffic, it loses unrouted traffic, so that the present formula inhibits competition. It also points out that RCA has no gateway quota to Areas A and B, so that its hinterland quota to those areas is not reduced by routed gateway traffic, as are ITT's and WUI's, where its gateway traffic is proportionately greater than it was in the base year. In view of its overages, and consequent lack of participation in unrouted traffic, it believes it is deprived of the opportunity to develop such market and to gain any return traffic from abroad that may result from the handling of unrouted traffic. It also cites other examples which it believes illustrate formula inequities—U.K. and Erie, South America, Japan.

[10] Prior to the merger, the WU Cables division relied on the WU domestic landline network to provide pickup and delivery for international message traffic to and from the hinterland. ITT's predecessor in the formula collectively referred to as the "A.C. & R. group," had an exclusive arrangement with Postal under which the ITT companies turned over to Postal unrouted inbound traffic in return for all its unrouted outbound traffic. RCA, however, had no such arrangements. RCA, however, did have a pre-merger contract with WU which provided that WU would turn some traffic over to it in return for RCA's inbound traffic. Additionally, RCA had arrangements with WU for exchange of traffic to and from trans-Pacific points.

[11] Section 222 provided that, notwithstanding the fact that pickup and delivery of international messages within the continental United States is defined as a domestic telegraph operation, the IRC's may pick up and deliver such messages "in the cities which constitute gateways approved by the Commission as points of entrance into or exit from the continental United States. . . ." *See* 47 U.S.C. § 222(a)(5) (1971).

[12] Appendix 1 to the formula provides that CNR and CPL be given quotas to certain points in Australasia. This provision arose because prior to the merger WU had a contract with CNR to turn over specifically-routed traffic destined for those points. Postal had a similar contract with CPL, except that unrouted traffic was also covered. The formula provides that specifically routed traffic be turned over to the two Canadian carriers and that sufficient unrouted traffic be turned over to CPL so that its pre-merger share of the total traffic (routed and unrouted) to the areas in question would be generally maintained. ITT argues that the contractual rights which resulted in this provision "can certainly be deemed to have been fulfilled. . . ." See ITT petition at pp. 11–12.

8. Essentially, none of the parties who filed comments herein disputes the factual allegations in the ITT petition. However, some of them take exception to certain features of the ITT proposal for a new formula. The position of the parties may be summarized as follows:

WU.—WU's present interest in the Formula lies in the establishment of provisions which are substantially clear and explicit so that it may readily determine the identity of the IRC to which traffic is to be transferred, and the means to make interpretations of the formula or resolve disputes. Any revision should provide for the distribution to be made by WU of international record traffic specifically routed via a Canadian carrier, or via an IRC which cannot carry such traffic out of the United States. In addition, any revision should not inhibit WU from changing its operating methods in pursuance of its modernization program. The present Formula is becoming increasingly incompatible with modern handling and processing of international telegrams. Instead of the present formula, all traffic should be required to be specifically routed by the sender. If this cannot be done, then responsibility for distribution should be transferred to an entity of the IRC's such as the International Quota Bureau. Failing this, unrouted traffic to a particular area should be transferred to one IRC, so as to simplify handlings. All costs of distribution should be borne by the IRC's, and WU should make a reasonable profit on its services in distribution of traffic. So far as ITT proposes expansion of existing gateways, WU opposes such a step. Since it has withdrawn from international operations, the IRC's should not expand into the domestic field. Moreover, the IRC's should not maintain independent offices in present gateways, but should use WU offices. In any event, any treatment of the gateway question in the Formula should be resolved in a manner consistent with any modification of the industry structure in Docket No. 19660.

RCA.—The ITT proposal seeks only to advance ITT's interest. ITT has an overage of $23.9 million as of October 1972, and RCA has an underage of $45.8 million. RCA says the cumulative overages and underages must be viewed in light of intentions at the time the Formula was prescribed. It asserts that the Formula reflects the pre-merger situation, in which WU Cables and ITT were closely allied with an extensive landline system, and have roughly equal proportions of in and out traffic, whereas RCA could never approach this position, since it had no close affiliation with a landline system. RCA voluntarily gave up gateway quotas to Areas A and B, to rely on its own efforts. ITT, which has said it did not plan to open additional gateway offices, promptly did so and doubled its advantage, obtaining additional traffic and diminishing unrouted traffic in gateways. WUI received substantial Area C traffic for which it never had quotas, giving it overages and causing RCA to have underages. WU entered into solicitation practices for WUI in both gateways and hinterland, and WUI has a hinterland overage while RCA and ITT have deficits. ITT's position ignores its own cumulative overage, and it has failed to establish a cause and effect relationship for its contention. It has not been inhibited by the Formula. With regard to Schedule B, it was neither a gift to RCA nor a price for unanimity on the Formula submitted to the Commission. ITT did not oppose it in 1943, and RCA does not take a single unrouted message from ITT. Since RCA has a substantial deficit under Schedule B, it cannot be said to have been compensated for the inequalities intended to be removed by Schedule B. In summary, ITT's approach is an arbitrary one, and reflects none of the public interest considerations recognized as important by the Commission in 1943. RCA, with the heaviest deficit, would be the chief victim. The basic problem is one of not having a method to liquidate deficiencies, and any revision must recognize and account for them. ITT has failed to make a *prima facie* case.

WUI.—In the interest of expedition, any possible Formula revisions should be explored preliminarily by the interested carriers, using Section XI of the Formula, which provides for an International Formula Committee, as a vehicle. Such course could eliminate or minimize tedious formal hearings. WUI will not comment at this time on ITT's proposals, since it is preferable to explore them in the Committee, and, moreover, they are lacking in detail, and there is a question as to whether the showing made is adequate to warrant a Section 222 proceeding. In any event, such issues as free direct access and gateway city charges should be first resolved.

French Cable.—As French is not a party to the formula, it made no comment either on ITT's allegations or on its recommendations. However, it did indicate its desire to participate in the resolution of the conflict.

TRT.—This company supports the ITT view that the Formula requires revision. It proposes the following changes:

1. that existing "overages" and "deficiencies" be eliminated;
2. that any carrier handling routed traffic to a foreign or overseas destination be eligible to handle unrouted traffic;
3. that each carrier be allocated a percentage of unrouted traffic tolls to each country or overseas destination in proportion to that carrier's share of the total routed traffic tolls to that country or overseas destination;
4. that in determining each carrier's share of the total routed traffic tolls only those tolls which are derived from messages originating outside the gateways be included;
5. that the percentages for each carrier and each country or overseas destination be determined annually for the latest complete year;
6. that the carriers report to the FCC the number and the tolls of all routed and unrouted messages to each country or overseas destination;
7. that the computation of the percentages and the verification of the reporting be the responsibility of the FCC;
8. that the IQB be dissolved.

TRT states that: The suggestion above that the unrouted traffic be allocated by country or overseas destination in proportion to the routed traffic for each carrier which is derived from messages originating outside the gateways would serve as an incentive for each carrier to maintain service quality and to be responsive to customer's requirements. Competition would be encouraged, and successes in innovation and providing more attractive service to the using public would be rewarded by increases in both routed and unrouted traffic. (Under the present quota system, increases in routed traffic have *negative* effects on unrouted traffic.) However, it is essential that tolls generated from messages originating within the gateways be excluded in calculating the amount of total routed traffic for each carrier so as to avoid undue preferences to the three larger U.S. international record carriers resulting from their favored gateway status. The suggested manner of handling unrouted outbound traffic has the advantages of simplicity and equity. It also provides for automatic updating of the percentage distributions annually. Furthermore, this method would not be affected by any changes in gateways, or hinterland direct access that the Commission might make in the future.

CPL.—CPL opposes the ITT proposal with respect to unrouted traffic distributed to Canadian carriers, arguing that it would violate Section 222(e)(1) in that CPL had an exclusive contract with Postal Telegraph, assumed by WU after merger, under which CPL received unrouted traffic to Australasia and the British West Indies, and, in return, transferred to Postal all inbound traffic from these areas to routes served by Postal. It states that the Commission, in adopting the Formula, agreed that WU should continue to transfer to CPL sufficient outbound traffic to these areas to maintain its percentage share in total routed and unrouted traffic to these points. The memorandum of understanding adopting the contract is still in existence, having been periodically renewed, so that CPL's pre-existing contract rights prevent the ITT proposed change. Moreover, equity could militate against a change, since CPL transfers traffic to WU. In addition, statements made by the Commission in its decision in the Formula in 1943, support continuance of the quotas.

CNR.—This Canadian company also opposes the ITT proposal and takes exception to the statement that any pre-merger contract with WU or Postal Telegraph can be now deemed to have been fulfilled. It believes the contractual obligations of WU are subsisting in law, and that its right to a quota continues

subject to the same protection as those of other international carriers. In the alternative, it suggests that if the present Formula requires revision, any new Formula should not liquidate deficiencies without some compensatory equitable provision being made in favor of the carriers in a deficiency position.

9. In response to the more recent comments, ITT points out that the Commission has never reviewed the Formula, and asserts that none of the commenting carriers has pointed out a good reason for delay. It states that, although it had suggested specific remedies, it does not contend that no other remedy would serve the public interest. It questions the feasibility of the WU suggestion that all traffic be routed, (though it states that this is an ultimate objective or a reasonable objective), in view of the effort required to educate the public, and the tendency of WU employees to treat a specification of "WU" as a routing via WUI. It believes that TRT's proposal is more viable, insofar as it suggests that unrouted traffic be allocated in proportion to routed traffic. It characterizes the responses of others as obstructionist or dilatory. ITT says that the CPL–WU memorandum of understanding was extended without consideration by the Commission; that the overages and deficiencies referred to by RCA illustrate the need for a new Formula and do not represent commitments or obligations of any carrier; and that the WUI suggestion, that free direct access and additional gateways require prior resolution, is without merit.

DISCUSSION

10. The formula presently in effect was prescribed by us in 1943. While we believed at that time that the formula reasonably fulfilled the Section 222(e)(1) requirements, we have recognized that it might become outmoded with the passage of time. In fact, at the time we approved the divestment proposal of WU and American Securities Corp. we noted that

[d]uring the period since [the merger], it has always been at least implicit in our administration of the formula that, in addition to being a device for an equitable distribution of outbound traffic, handled by [WU], among the international carriers, the formula as now written is an interim document designed to provide protection to the other international carriers against any favoritism on behalf of [WU's] cable system so long as such system is part of Western Union. 30 F.C.C. 323, 373–4 (1961).

In that proceeding we did approve amendments to the formula to reflect the fact that thereafter WUI (the divested WU cables division) would be an independent IRC with no connection to WU. However, since we noted that we had not been asked to overhaul the basic structure of the formula, we left that question to an appropriate proceeding. The matters set out in the instant petition and responses thereto, raise a substantial question as to whether the formula has kept pace with the developments in the industry since 1943. We agree that it is time, some 30 years later, to re-evaluate that structure in light of present realities. While we included this subject in Docket No. 19660, to be considered along with other matters, it appears that, at this time, a more intensive analysis should be given to the formula and possible revisions. Accordingly, we are instituting a special investigation into this matter.

11. While we agree that the formula needs to be re-examined, we think that our inquiry should be broader than that requested in the ITT petition. Both TRT and WU have made alternative proposals which appear to us equally worthy of further consideration. Other interested parties, in view of our desire thoroughly to explore the question of formula revision, may wish to offer other proposals for our consideration at this time. So that the resulting revisions may best serve the public interest, we believe that, consistent with an expeditious resolution of this matter, we should consider all relevant views. We intend, therefore, that the investigation ordered herein should explore the whole matter without being tied to the proposals and views of any one party.

12. We note that ITT has acknowledged that its own views are not necessarily the only ones which will serve the public interest. ITT may well wish to review further its announced position in view of the alternatives advanced by the other parties. Some of the parties herein withheld comment on the merits of the ITT petition pending further formal action. Moreover, the parties have not commented on the WU or TRT proposals, which were submitted in response to the letter of May 25, 1973, from the Chief, Common Carrier Bureau.

13. Under these circumstances, the most expeditious course is to have the interested parties submit detailed and explicit written positions setting out the facts and other considerations (legal, policy, etc.) which are relevant to a decision on the several issues presented by the pleadings. We shall provide for responses thereto and replies. We believe that this proceeding is an appropriate one for the application of this approach. To the extent that an oral hearing is necessary or desirable, upon review of the submissions indicated above, we shall, of course, consider an appropriate request by any party, or take action on our own motion.

14. We have referred above (paragraph 11) to the possibility that other parties may wish to propose changes in addition to those suggested by ITT, TRT, and WU. Should this be so, any such party may, to the extent it believes our order herein otherwise precludes such submission, request an appropriate amendment of such order.

15. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, 222, and 403 of the Communications Act of 1934, That an investigation is hereby instituted to determine whether the distribution of telegraph message traffic under the formula prescribed pursuant to Section 222(e)(1) of the Communications Act for the distribution of outbound international message traffic handled by The Western Union Telegraph Co. is unjust, unreasonable, or inequitable or not in the public interest and, if so, the nature of the amendments which the Commission should make thereto;

16. IT IS FURTHER ORDERED, that the investigation ordered herein shall include inquiry into the following issues:

(1) The exact manner in which the distribution of traffic is presently being made, broken down by carrier, category of traffic, and areas and sub-areas.

(2) The nature, extent and reason for the existing overages and deficiencies in assigned quotas. In this connection, each carrier shall present full data with respect to its overages or deficiencies, by area and sub-areas, as of each year-end for the ten (10) years ending December 31, 1972, and an estimate for the year

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ending December 31, 1973; as well as the totals, by area and sub-area, since distribution began under the formula.

(3) The present defects in the formula, pointing out with specificity the effect of each claimed defect not only on the respondent, but also on other international record carriers and on the quality of service provided to and the rates charged the using public.

(4) The specific amendments which should be made to the formula to remove each such defect, the effect each such amendment will have on respondent, other international record carriers, and on the quality of service provided to and the rates charged the using public.

In answering issues (3) and (4), attention should be directed to the proposals of ITT, WU, and TRT. Responses and replies will, of course, also be directed to any new matter which may be raised in the initial statements filed pursuant hereto.[13]

17. IT IS FURTHER ORDERED, That, to the extent provided for herein, the petition for rulemaking filed by ITT World Communications Inc. IS GRANTED and is otherwise DENIED in all respects;

18. IT IS FURTHER ORDERED, That ITT World Communications Inc., RCA Global Communications, Inc., Western Union International, Inc., TRT Telecommunications Corp., The French Telegraph Cable Co., The Western Union Telegraph Co., Canadian National Railway Co., Canadian Pacific, Ltd., and United States-Liberia Radio Corporation are hereby made parties respondent to the investigation instituted herein;

19. IT IS FURTHER ORDERED, That the International Formula Committee, including its staff the International Quota Bureau, is hereby made a party respondent for the purpose of furnishing such information that it may have within its possession or knowledge concerning the operation of the formula that may be required by the Commission for the resolution of this matter;

20. IT IS FURTHER ORDERED, That the following procedures will be followed in this investigation:

(1) Respondents shall file, and other interested persons may file, within sixty (60) days of the release of this Order, statements of fact and memorandums of law relative to the issues set out herein;

(2) Responses to initial statements shall be filed thirty (30) days after the statements are due, and replies to such responses shall be filed within fifteen (15) days after the filing of responses;

(3) All statements filed by a respondent, or other interested persons, shall be served upon all other respondents and all further pleadings shall be served on those respondents and all other persons filing statements herein;

21. IT IS FURTHER ORDERED, That the Commission will make such further orders herein as are necessary or desirable.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[13] We do not, however, think that a resolution of the issue raised by ITT with respect to redefining gateway concepts is a prerequisite to revision of the formula and do not propose to address it in this proceeding.

F.C.C. 73-1121

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice of Apparent Liability for Forfeiture to KAYS, Inc., Hays, Kans.

OCTOBER 25, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

KAYS, INC.,
Radio Station KFEQ,
Post Office Box 817,
Hays, Kans. 67601

GENTLEMEN: This letter constitutes Notice of Apparent Liability for forfeiture pursuant to Section 503(b)(2) of the Communications Act of 1934, as amended.

Information obtained during a Commission field inquiry indicates that Station KFEQ charged different rates for political announcements of the same class and duration to legally qualified candidates for the same office before the Missouri general election of November 7, 1972. It appears that the different rates charged the following candidates constitute violations of the uniform rate provision of Section 73.120(c) of the Commission's Rules:

Candidate	Office	Inclusive dates	Length	Class	Net rate
Kirkpatrick	Sec. State	Oct. 26-Nov. 1	:30	ROS	$3.53
Kuelle	Sec. State	Oct. 30-Nov. 6	:30	ROS	2.55
Parker	Treasurer	Nov. 2-6	:30	ROS	2.55
Spainhower	Treasurer	Oct. 26-Nov. 6	:30	ROS	3.50

Your explanation is that Mr. Kirkpatrick's order was incorrectly computed by the agency and accepted by the station at $3.00 per announcement plus agency commission of 18.6 per cent. You explained that the rate given Mr. Spainhower was in error, possibly due to use of the wrong rate card. However, it is the licensee's responsibility to make sure that all charges for political announcements are in conformity with the Communications Act of 1934, as amended, and the Commission's Rules.

The field inquiry also revealed evidence of a contract for commercial advertising calling for 1,040 thirty-second ROS (Run-of-Schedule) commercial announcements at $2.20 per announcement scheduled between February 28, 1972 and February 24, 1973. Since this contract was in effect during the 60 days preceding the general election of November 7, 1972, it appears to establish the lowest unit charge of the station for the same class and amount of time for the same period

where the legally qualified candidate uses his or her voice in the announcement. Thus, it appears from contracts and other documents found in the station's political file, that the following candidates were not afforded the lowest unit charge in the 30-second ROS rate classification:

Candidate	Office	Inclusive dates	Number	Net rate charged
Phelps	Lt. Gov.	Oct. 26–Nov. 6	126	$3.00
Sloan	U.S. Rep	Oct. 31–Nov. 7	25	3.50
Danforth	Atty. Gen	Oct. 26–Nov. 6	68	2.97

Also found to be in effect during the 60 days preceding the November 7, 1972 general election was a contract for commercial advertising calling for a daily, 60-second commercial announcement at $3.60 per announcement in Class AA time, thereby establishing the lowest unit charge of the station for that class and amount of time for the same period. Thus, it appears the following candidates, whose voice was used in their announcements, were not afforded the lowest unit charge in the 60-second, AA time classification:

Candidate	Office	Inclusive dates	Number	Net rate charged
Bond	Gov.	Oct. 28–Nov. 7	103	$9.00
McAttee	U.S. Rep	Nov. 1–Nov. 7	10	8.10
Cox	St. Rep	Nov. 3–Nov. 7	29	7.65

Further, there was a contract for political advertising in effect during the 60-day period preceding the general election that established the lowest unit charge for 60-second ROS announcements at $3.40 per announcement. Consequently, it appears that the following candidate, whose voice was used in his announcements, was not afforded the lowest unit charge for 60-second announcements in the ROS time classification:

Candidate	Office	Inclusive dates	Number	Net rate charged
Dowd	Gov.	Oct. 27–Nov. 7	88	$4.71

Your explanation of the apparent failure to afford legally qualified candidates the lowest unit charge in the aforementioned classes and amount of time is that the station felt that these rates were not available to any other advertisers because of their long-term, continuous nature. However, we note that a similar situation was resolved in question and answer number 10 of the Commission's Public Notice of March 16, 1972 on the Use of Broadcast and Cablecast Facilities by candidates for Public Office, 34 FCC 2d 510. We note further, your intention to make restitution to the aforementioned candidates, but once again point out that this will not serve to excuse past violations. *Executive Broadcasting Corp.*, 3 FCC 2d 699 (1966). Therefore, it appears that these charges made for the use of broadcast facilities to

legally qualified candidates for public office during the 60 day period preceding a general election, constitute violations of the lowest unit charge provisions of Section 315(b)(1) of the Communications Act of 1934, as amended by the Federal Election Campaign Act of 1971 (Public Law 92–225).

Other information obtained during the field inquiry, including tape recordings of portions of KFEQ's broadcasts on January 5, 1973, indicates the licensee violated Section 73.112(a)(2) of the Commission's Rules pertaining to the proper keeping of program logs. The Commission has information to the effect that in October 1972, Mr. Gil LaPorte, KFEQ station manager, instructed station personnel to eliminate the commercial continuity (open and close) of certain programs from the computation of commercial matter shown on KFEQ's program logs. This resulted in the actual duration of commercial time (open and close plus one or more commercial announcements) to be in excess of that shown on the program logs in the following instances:

Time	Program	Sponsor	Commercial time on 1/5/73	
			Logged	Actual
6:07 a.m.	Farm Digest	Monsanto	60 sec	70 sec.
6:18 a.m.	What's New In Agriculture.	Farmland Industries	60 sec	85 sec.
6:45 a.m.	Livestock Market	PCA	60 sec	110 sec.
6:55 a.m.	Midwest Weather	Jenkins Tire	60 sec	80 sec.
12:10 p.m.	Just Wonderin'	Schreiber Mills	120 sec	177 sec.
12:55 p.m.	Capt. Stubby	Allied Mills	90 sec	105 sec.

We note the text of the commercial continuity went beyond mere mention of the sponsor's name. They included descriptive sentences or phrases that constituted measurable commercial time. It appears that this failure to log the total commercial content associated with these programs constitutes a willful violation of Section 73.112(a)(2) of the Commission's Rules.

We note that this is the initial forfeiture imposed under the lowest unit charge provision of Section 315(b)(1) of the Communications Act of 1934, as amended by the Federal Election Campaign Act of 1971. However, we consider this to be a serious matter that warrants substantial forfeitures. Moreover, with respect to the logging violations, in a similar case (*WSER, Inc.* FCC 69–242) where the station manager (not a principal in the licensee corporation) instructed station employees to make false entries in operating logs, the Commission imposed a $5,000 forfeiture.

We have considered the facts in this case and have determined that, pursuant to Section 503(b)(1)(B) of the Communications Act of 1934 as amended, you have incurred an apparent liability for forfeiture in the amount of $5,000 for willful or repeated violation of Section 315(b)(1) of the Communications Act of 1934, as amended, and Sections 73.120(c) and 73.112(a)(2) of the Commission's Rules in the operation of Station KFEQ. The apparent liability recited herein is limited to those violations occurring within one year of the date of the issuance of this Notice.

Under Section 1.621 of the Commission's Rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $5,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation; or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioner Robert E. Lee absent; Commissioners Reid and Hooks concurring in the result.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1212

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of JOHN H. PHIPPS, BROADCASTING STATIONS, INC., TALLAHASSEE, FLA. For Modification of License	BMLCT-747

NOVEMBER 21, 1973.

JOHN H. PHIPPS BROADCASTING STATIONS, INC.,
Television Station WCTV, P.O. Box 3045,
Tallahassee, Fla. 32303

GENTLEMEN: This refers to your application (BMLCT-747) for modification of license to change the location of the main studio of television broadcast station WCTV, channel 6, Thomasville, Georgia, from Thomasville to your antenna site, about midway between Thomasville and Tallahassee, Florida.

On the basis of your representations, the Commission has determined that this modification would be consistent with the public interest and that you have shown good cause for a grant of this modification. It should be emphasized, however, that this action does not relieve you of your primary obligation to your principal community, Thomasville, Georgia. At the same time, because of your continuing disregard of the Commission's rules with respect to main studio location, we are this date issuing a Notice of Apparent Liability. In addition, in future license renewals you will be required to show the Commission that an appropriate emphasis has been placed on the needs and interests of Thomasville, your city of license.

Commissioners Johnson and Hooks concurred in the result. Commissioner H. Rex Lee was absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1213

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

IN RE NOTICE OF APPARENT LIABILITY FOR FORFEITURE TO JOHN H. PHIPPS BROADCASTING STATIONS, INC., TALLAHASSEE, FLA.

NOVEMBER 21, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

JOHN H. PHIPPS BROADCASTING STATIONS, INC.,
Television Station WCTV,
P.O. Box 3045,
Tallahassee, Fla. 32303

GENTLEMEN: This letter constitutes Notice of Apparent Liability for a forfeiture issued pursuant to section 503(b)(2) of the Communications Act of 1934, as amended.

Section 73.613(a) of the rules provides that the main studio of a television broadcast station be located in the principal community to be served. Section 73.613(b) provides that no relocation of a main studio to a point outside the principal community may be made without first securing a modification of the license. On October 26, 1972, an application for a modification of the license of television station WCTV, channel 6, Thomasville, Georgia, was filed by you with the Commission. In this application you stated that because of the increase in population of Tallahassee, and the fact that Tallahassee was the capital of the State of Florida, it had been necessary to originate 69 percent of the WCTV programming from the Tallahassee studio, and that only 31 percent of the local programming is originated from the city of license Thomasville, Georgia. Although admitting that 69 percent of the programming, and all news programs were not originated in Thomasville, the city of license, you have attempted to justify the violation of the Communications Act and the Commission's rules by stating that both studio facilities are equipped with comparable technical equipment, and are maintained and staffed by approximately equal personnel according to the requirement of the location.

On examination of the record it appears that the Tallahassee studio has more up-to-date equipment to use in its operation than has the main studio in Thomasville, and that the Tallahassee studio has a staff of 64 employees, while the Thomasville main studio has only 12 employees on its staff. Further, the only regularly scheduled non-network, non-entertainment programs originated in Thomasville are the 30-minute FARM REPORT, broadcast at 6:25 A.M., Monday through Friday, and the 30-minute MIDDAY REPORT, broadcast at 1:00 P.M., Monday through Friday.

The Commission has considered all the circumstances of this case and has determined, pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended, that you have incurred an apparent liability for a forfeiture of $10,000 for willful or repeated violations of section 308 of the Communications Act of 1934, as amended, and section 73.613(b) of the Commission's rules by locating your main studio outside the principal community of Thomsville, Georgia, without prior Commission approval.

Under section 1.621 of the Commission's rules, you may take any of the following actions in regard to this forfeiture proceeding:

1. You may admit liability by paying the forfeiture within thirty days of receipt of this Notice. In this case you should mail to the Commission a check or similar instrument for $10,000 made payable to the Federal Communications Commission.

2. Within thirty days of receipt of this Notice you may file a statement, in duplicate, as to why you should not be held liable or why the forfeiture should be reduced. The statement must be signed by the licensee; a partner, if the licensee is a partnership; by an officer, if the licensee is a corporation, or by a duly elected or appointed official, if an unincorporated association. The statement may include any justification or any information that you desire to bring to the attention of the Commission. After consideration of your reply the Commission will determine whether any forfeiture should be imposed, and, if so, whether the forfeiture should be imposed in full or reduced to some lesser amount. An order stating the result will be issued.

3. You may take no action. In this case the Commission will issue an order of forfeiture after expiration of the thirty-day period ordering that you pay the forfeiture in full.

Commissioners Johnson and Hooks concurred in the result. Commissioner H. Rex Lee was absent.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1206

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
MOSHANNON VALLEY TV CABLE CO., INC., PHILIPSBURG BORO, PA.	CAC-401 PA396
MOSHANNON VALLEY TV CABLE CO., INC., RUSH TOWNSHIP, PA.	CAC-402 PA397
MOSHANNON VALLEY TV CABLE CO., INC., SOUTH PHILIPSBURG BORO, PA.	CAC-403 PA398
MOSHANNON VALLEY TV CABLE CO., INC., OSCEOLA MILLS BORO, PA.	CAC-404 PA395
MOSHANNON VALLEY TV CABLE CO., INC., CHESTER HILL BORO, PA.	CAC-405 PA392
MOSHANNON VALLEY TV CABLE CO., INC., DECATUR TOWNSHIP, PA.	CAC-406 PA393
MOSHANNON VALLEY TV CABLE CO., INC., BOGGS TOWNSHIP, PA.	CAC-407 PA391
MOSHANNON VALLEY TV CABLE CO., INC., MORRIS TOWNSHIP, PA.	CAC-408 PA394
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted: November 21, 1973; Released: November 30, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT

1. On May 15, 1972, Moshannon Valley TV Cable Co., Inc., filed the above-captioned applications to add Station WOR-TV (Ind.), New York, New York, to its existing 12-channel cable television systems at or near Philipsburg Boro, Pennsylvania.[1] The systems commenced operation in December, 1958 and are presently carrying the following television broadcast signals:

WTAE-TV (ABC, Channel 4), Pittsburgh, Pennsylvania
KDKA-TV (CBS, Channel 2), Pittsburgh, Pennsylvania
WIIC-TV (NBC, Channel 11), Pittsburgh, Pennsylvania

[1] According to the 1972 FCC Forms 325 filed by Moshannon, population and subscriber distribution are as follows:

	Subscribers	Population
Philipsburg Boro	1,268	3,158
Rush Township	396	3,136
South Philipsburg Boro	163	468
Osceola Mills Boro	461	1,665
Chester Hills Boro	259	856
Decatur Township	350	2,697
Boggs Township	194	1,444
Morris Township	488	2,891

WQED (Educ., Channel 13), Pittsburgh, Pennsylvania
WJAC–TV (NBC, Channel 6), Johnstown, Pennsylvania
WARD–TV (CBS, Channel 19), Johnstown, Pennsylvania
WPSX–TV (Educ., Channel 3), Clearfield, Pennsylvania
WFBG–TV (CBS, Channel 10), Altoona, Pennsylvania
WPIX (Ind., Channel 11), New York, New York

In addition, one channel is used for non-automated program originations and one for automated originations (a time-weather channel). The applications are unopposed.

2. Because the Moshannon systems are located within the Johnstown-Altoona, Pennsylvania major television market (#74) carriage of distant independent signals is governed by Section 76.63 of the Commission's Rules, as it relates to Section 76.61(b)(2)(i).[2] Accordingly, if Moshannon selects its second independent signal from a top 25 market, it must do so from one of the two closest such markets, where such signal is available.[3] WOR–TV is located in the New York, New York market (#1), which is the sixth closest top 25 market;[4] however, Moshannon has not requested waiver of the carriage rules in order to carry WOR–TV.

3. Moshannon argues that carriage of WOR–TV is consistent with the Rules because it is the only independent signal in any market which is "practically available." In support of its position, Moshannon maintains that: there are no independents available off-the-air, and the cost of building microwave facilities would be prohibitive;[5] New York City is only 82 miles further than the second closest top 25 market, and the Commission in the past has held this to be *de minimis*;[6] the communities involved are small and remote from the principal communities of the market; other nearby communities are carrying WOR–TV; and carriage of WOR–TV on Moshannon's systems would greatly diversify program choices currently available.

4. We find that Moshannon's carriage proposal is inconsistent with Section 76.61(a)(2)(i) of the Rules. In adopting the Rules, particular concern was expressed that, in the absence of leapfrogging restrictions,

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[2] Section 76.61(b)(2)(i) provides, in pertinent part:

(2) *Independent stations.* (i) For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station; *Provided, however,* That if signals of stations in the first 25 major television markets (See § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two closest such markets, where such signals are available.

NOTE.—It is not contemplated that waiver of the provisions of this subparagraph will be granted.

[3] As its first independent, Moshannon is carrying Television Broadcast Station WPIX, which is grandfathered, pursuant to Section 76.65 of the Rules.

[4] New York City is located 222 miles from Philipsburg Boro, Pennsylvania. The other top 25 markets which are geographically closer to Philipsburg Boro and have independent broadcast stations are:

City	Station	Distance
Baltimore, Maryland	WMET–TV, WBFF	140 miles
Buffalo, New York	WUTV	141 miles
Washington, D.C.	WDCA, WTTG	152 miles
Philadelphia, Penn.	WKBS, WPHL–TV, WTAF–TV	174 miles
Cleveland, Ohio	WUAB, WKBF–TV	186 miles

[5] Moshannon points out that it presently carries WPIX by microwave, and the cost of adding a second New York City signal would be minimal.

[6] In support of this argument, Moshannon cites several cases decided under the former rules. The factors which determine waiver policy under the present rules are sufficiently different to limit severely the applicability of those decisions to the present proceedings.

a limited number of independent stations from the largest markets would be carried to the exclusion of all other stations. It was the Commission's intention to allow greater participation by television stations in the benefits of cable carriage.[7] Leapfrogging to the sixth closest market to pick up a New York City signal would not further this policy. In determining available signals, we indicated that we would not, except in unusual cases, consider microwave cost; to do so would undermine the anti-leapfrogging rules.[8] Moshannon has made no showing of unusual circumstances to warrant special relief here. The 82 mile distance involved in this situation is not *de minimis*. New York City is 37 percent further from Moshannon's cable systems than Buffalo, the second closest top 25 market. Compare *Madison County Cablevision*, FCC 73–934, —— FCC 2d —— (waiver of Section 76.61(b)(2)(i) granted where there was less than a 4 percent total mileage difference, and waiver furthered policy of encouraging in-state programming). We have stated previously that merely alluding to the fact that there are nearby communities carrying a signal is not sufficient justification for carriage of an out-of-market signal. See *New Worlds Cable TV, Inc.*, FCC 72–944, 37 FCC 2d 972. Nor does the location of the subject cable communities on the fringe of Johnstown-Altoona market create special circumstances that would justify waiver. Finally, Moshannon need not carry WOR–TV to achieve diversity of programming, but can select an independent whose carriage does not violate the anti-leapfrogging rules.

In view of the foregoing, the Commission finds that grant of the subject applications would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications for certificates of compliances (CAC–401 through 408) filed May 15, 1972, by Moshannon Valley TV Cable Co., are DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[7] Para. 92, *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 179.
[8] Para. 25, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 335.

F.C.C. 73-965

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of PACIFICA FOUNDATION, WASHINGTON, D.C. For Construction Permit	Docket No. 18634 File No. BPED-896

MEMORANDUM OPINION AND ORDER

(Adopted September 19, 1973; Released September 26, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT; COMMISSIONER HOOKS CONCURRING IN PART AND DISSENTING IN PART AND ISSUING A STATEMENT IN WHICH COMMISSIONER JOHNSON JOINS.

1. We have before us the above-referenced application and the following pleadings: (a) Petition for Extraordinary Relief, filed May 7, 1973 by Pacifica Foundation ("Pacifica"); Opposition, filed May 31, 1973 by Chief, Broadcast Bureau; and Reply to opposition, filed June 12, 1973 by Pacifica; (b) Pacifica's Application for Review of Review Board's Memorandum Opinion and Order [1], adding a Section 1.65 issue against Pacifica; and Opposition to Application for Review, filed June 12, 1973 by the Chief, Broadcast Bureau; and (c) the Broadcast Bureau's Application for Review of the same Review Board Memorandum Opinion and Order, filed June 6, 1973, denying addition of an unauthorized transfer of control issue against Pacifica; Pacifica's Opposition to this Application for Review, filed June 14, 1973; and the Broadcast Bureau's Reply to opposition, filed June 25, 1973. Also before us is our Order (FCC 73-815), adopted August 2, 1973, staying the hearing in this proceeding until October 1, 1973, in order to permit the Commission to consider the pleadings referred to above.

2. We do not think it necessary to set out the protracted history of this proceeding or to discuss at length the voluminous pleadings which are before us. Suffice it to say that Pacifica's application for a permit for a noncommercial educational FM station in Washington, D.C. was designated for hearing, along with a mutually exclusive application for the same facilities, in 1969. *Pacifica Foundation*, 24 FCC2d 223. The competing application was dismissed on February 25, 1972, with the result Pacifica's application is no longer in a comparative posture.

3. The gist of Pacifica's petition for extraordinary relief is that the parameters of the hearing are boundless under Issue 1 of the Designation Order [2], as evidenced by the first two days of the hearing. Contending that Issue 1 violates the particularity requirements of Section

[1] *Pacifica Foundation*, 41 FCC2d 71 (1973).

[2] Issue 1 is as follows: "To determine the legal, financial, technical, and other qualifications of Pacifica Foundation to construct and operate the proposed non-commercial educational FM station."

309(e) of the Communications Act. Pacifica first requests that the qualifications issue be reformulated in order to comply with Section 309(e). Contending next that reformulation of the qualification issue in accordance with Section 309(e) will obviate the need for further hearings, Pacifica then requests that its application be granted without hearing.

4. We are persuaded that Issue 1 of the Designation Order should be deleted. On the record before us (which includes evidence respecting Pacifica's legal qualifications and an amendment respecting Pacifica's financing plan under the *Ultravision* standard), we find that Pacifica is legally, financially and technically qualified to construct and operate the proposed station. Accordingly, further inquiry into these aspects of Pacifica's qualifications is not necessary.

5. However, we are not persuaded that a grant without hearing is in order, in light of the *ex parte* and Section 1.65 issues added by the Review Board [3].

6. Accordingly, IT IS ORDERED, That, the petition for extraordinary relief is granted to the extent indicated, and denied in all other respects.

7. IT IS FURTHER ORDERED, That, Issue 1 of the Designation Order is hereby deleted, and further hearings in this proceeding shall be limited to the two remaining issues hereinbefore noted.

8. IT IS FURTHER ORDERED, That, (a) the application for review, filed by Pacifica Foundation, seeking review of the Review Board's Memorandum Opinion and Order specifying a Section 1.65 issue against Pacifica, and (b) the application for review, filed by the Broadcast Bureau, seeking review of the same Memorandum Opinion and Order, denying addition of an unauthorized transfer-of-control issue against Pacifica, ARE DENIED.

9. IT IS FURTHER ORDERED, That, the stay of the hearings heretofore ordered, IS DISSOLVED, and the hearing shall resume at such date as the Presiding Judge orders.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Acting Secretary.*

SEPARATE OPINION OF COMMISSIONER BENJAMIN L. HOOKS CONCURRING IN PART; DISSENTING IN PART IN WHICH COMMISSIONER JOHNSON JOINS

I concur with the majority insofar as the deletion of the general qualifications issue against Pacifica.

I am not, however, persuaded of the necessity to continue the evidentiary hearing on the *ex parte* [1] or Section 1.65 [2] (47 C.F.R. § 1.65) issues designated.

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[3] *Pacifica Foundation*, 25 FCC2d 787 (1970) and *Pacifica Foundation*, 41 FCC2d 71 (1973).

[1] To determine whether Pacifica Foundation has solicited or encouraged others to make an *ex parte* presentation in violation of Sections 1.222 and 1.225 of the Commission's Rules and, if so, the effect thereof on the applicant's requisite or comparative qualifications.

[2] To determine whether Pacifica Foundation has complied with the provisions of Section 1.65 of the Commission's Rules by keeping the Commission advised of changes in its officers and directors; and, if not, to determine the effect of such non-compliance on the applicant's qualifications to be a Commission licensee.

While *ex parte* matters are generally serious because they go to the very heart of the integrity of the adjudicatory process, and I find the prospect of such contacts as abhorrent as any decisionmaker, there are varying degrees of the generic offense. In this instance, the record reflects—and Pacifica has not refuted—that a Pacifica employee disseminated a program guide containing a paragraph importuning its KPFK (Los Angeles, California) listenership to communicate favorably to the Commission on Pacifica's Washington, D.C., FM application. While the program guide solicitation was improper, it was not a covert attempt to circumvent our procedural rules or a case of furtive influence peddling. On the facts as known, and as I read the *Clay County*[3] and *WKTS*[4] cases cited by Pacifica, it is highly improbable that this issue would be ultimately disqualifying.

With respect to the Section 1.65 reporting issue, the Review Board—while designating the issue—opined that ". . . the precise significance of the composition of the governing body of a non-commercial educational applicant is unclear", 41 F.C.C. 2d 71, 72 (1973), and it is my understanding that the Commission has been relaxed in its application of Section 1.65 to non-commercial licensees in the past. While the Review Board perhaps overstates the case, since trustee composition information is useful for purposes of identification of (possibly harmful) interlocking directorships, assignment of responsibility, and exclusion of unqualified (or disqualified) directors, the infraction by Pacifica is apparently technical as well as guileless. Again, assuming adverse findings, disqualification on this point should be unlikely.

In light of the fact that there appears to be no real factual disputation, the open questions being inferential and conclusionary, I find no warrant for a hearing.[5] See, *Pan American Petroleum* v. *F.P.C.*, 322 F. 2d 999 (1963). Moreover, considering my above reasoning regarding the precedentially non-disqualifying character of the infractions underlying the remaining issues along with the fact that Pacifica licenses have been granted and renewed with attendant public interest findings over the years; I would vote to decide without hearing; and, on the basis of the present record, to grant.[6]

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[3] *Clay County Broadcasting Co.*, 7 R.R. 2d 560 (1966).
[4] *WKTS, Inc.*, 30 F.C.C. 2d 621 (1971).
[5] The Commission may grant an application without hearing if it finds "on the basis of pleadings filed, or other matters which it may officially notice, that there are no substantial and material questions of fact' (47 U.S.C. § 309(d)(2)) and that the grant would serve the public interest.
[6] None of this, of course, reflects an intention to ignore facts adduced at hearing or a predisposition on the outcome thereof.

F.C.C. 73D–53

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of: P B L BROADCASTING CO., VINITA, OKLA. For a Construction Permit	Docket No. 19640 File No. BP–19233

APPEARANCES

Richard B. Zaragoza and *Grover C. Cooper* on behalf of Northeast Oklahoma Broadcasting, Inc.; *Robert A. Marmet* and *Gordon R. Malick* (Marmet & Webster) on behalf of PBL Broadcasting Company; and *Robert B. Nelson* and *James W. Himes* on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
CHESTER F. NAUMOWICZ, JR.

(Issued October 3, 1973; Effective November 23, 1973 pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. By order released November 21, 1972 the above-captioned application was consolidated for hearing with the mutually exclusive application of Northeast Oklahoma Broadcasting, Inc. By order of the Review Board released April 26, 1973 the originally specified issues were enlarged. However, by order of the presiding Judge released September 21, 1973, the Northeast application was dismissed, and the PBL application was amended to specify the physical facilities theretofore specified by Northeast. This action rendered moot all of the designated issues which were comparative in nature, or directed only to the qualifications of Northeast. The only issues remaining for consideration are:

"1. To determine whether the PBL Broadcasting Company is financially qualified to construct and operate its proposed station.

"2. To determine whether there is a reasonable possibility that the tower height and location proposed by the PBL Broadcasting Company would constitute a menace to air navigation."

2. The applicants published notice of the hearing and notified the Commission thereof pursuant to the governing statute and rules. Conferences and hearings were conducted on various dates between December 21, 1972 and October 1, 1973, with the record being closed on the later date. PBL filed proposed findings of fact on October 1, 1973.

FINDINGS OF FACT

3. PBL will acquire from Northeast existing facilities of Station KVIN in place for $16,000. Its rental costs for real estate and improvements will be $1,500 during the first year. Its operating costs during the first year will be $50,000.

4. PBL has existing capital of $2,400. Its three equal stockholders have each subscribed to purchase $38,000 of the applicant's stock.

5. PBL's amendment to specify the in place physical facilities of Station KVIN included the existing tower.

CONCLUSIONS

6. PBL will need $67,500 to put its station on the air and operate it for one year. It will have available $116,400 to meet this need. The applicant is financially qualified.

7. The order of designation did not specify an air hazard issue with respect to the existing KVIN tower which Northeast proposed to use. Hence, PBL's amendment to specify use of that tower effectively mooted the air hazard issue.

8. PBL having satisfied or mooted all of the issues designated against it, and having been found otherwise qualified in the order of designation, the public interest would be served by a grant of its application.

Accordingly, IT IS ORDERED, That unless an appeal is taken to the Commission by a party or the Commission reviews the Initial Decision on its own motion in accordance with Rule 1.276, the subject application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
CHESTER F. NAUMOWICZ, Jr., *Administrative Law Judge*

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F.C.C. 73-1145

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request for
EXTENSION OF NEGOTIATING PERIOD IN THE
POLE ATTACHMENT NEGOTIATIONS

OCTOBER 31, 1973.

In Re: Pole Attachment Negotiations.

E. STRATFORD SMITH, ESQ.,
Smith & Pepper,
700 Montgomery Building,
1776 K Street, N.W.,
Washington, D.C. 20006

DEAR MR. SMITH: This is in reference to your letters of October 26, 1973 to the General Counsel and the Secretary of the Commission requesting a 90-day extension of the negotiating period set out in our Public Notice, FCC 73-851 of August 3, 1973. The Commission is pleased that progress has been made in the negotiations of pole attachment and conduit agreements and notes that GTE has agreed to hold in abeyance its proposed rate increase so long as there is a prospect for successful conclusion of the negotiations. In view of the above, the request for an additional 90-day negotiating period is granted.

We would like to stress that we expect all parties to strive to reach mutual agreement in these matters within the time frame prescribed. In addition, it is requested that all parties submit progress reports every 15 days beginning November 15, 1973, to the General Counsel, Chief, Common Carrier Bureau, and the Chief, Cable Television Bureau concerning the status of the negotiations.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73–1162

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF THE COMMISSION'S RULES TO ESTABLISH A PRIVATE OPERATIONAL-FIXED MICROWAVE RADIO SERVICE (PART 94)	Docket No. 19869
AMENDMENT OF PARTS 7, 9, 10, 11, AND 16 [NOW 81, 87, 91, AND 93] OF THE COMMISSION'S RULES TO PROVIDE FOR THE ASSIGNMENT OF FREQUENCIES IN THE BANDS ABOVE 952 MC TO OPERATIONAL FIXED STATIONS IN SUCH SERVICES UPON A SHOWING THAT HARMFUL INTERFERENCE WILL NOT BE CAUSED TO EXISTING STATIONS	Docket 14179
PETITION FOR RULEMAKING FILED BY THE NATIONAL ASSOCIATION OF MANUFACTURERS TO AMEND PART 91	RM–1862
PETITION FOR RULEMAKING FILED BY THE UTILITIES TELECOMMUNICATIONS COUNCIL TO AMEND PART 2	RM–339
PETITION FOR RULEMAKING FROM AMERICAN PETROLEUM INSTITUTE TO AMEND PARTS 2, 81, 87, 89, 91, AND 93	RM–2272

MEMORANDUM OPINION AND ORDER AND NOTICE OF PROPOSED RULEMAKING

(Adopted November 14, 1973; Released November 26, 1973)

BY THE COMMISSION:

1. Notice of Proposed Rule Making is hereby given in the above-entitled matter. It is proposed to revise provisions and to establish a separate rule part (Part 94) in the Commission's Rules to govern licensing and operating private operational-fixed microwave systems in frequency bands above 952 MHz. The specific frequency bands involved in these proposals are 952–960, 1850–1990, 2130–2150, 2150–2160, 2180–2200, 2500–2690, 6575–6875, and 12,200–12,700 MHz, all of which may be authorized for operational-fixed systems; and 2450–2500, 13,200 MHz and above, which permit mobile operations in addition to operational-fixed systems.

BACKGROUND

2. Private microwave systems are now regulated under interim rules in various Safety and Special Radio Services that have been developed essentially on the basis of findings made in 1959, in Docket 11866 (27 FCC 359). That proceeding considered "the adequacy of the supply

of microwave frequencies and the terms and extent to which radio station authorizations may be made to private users," and the Commission determined that private users of microwave systems should be regularly accommodated on certain frequency bands above 890 MHz.[1] A number of rule making actions followed that implemented Docket 11866 findings, notably Docket 13083 (Report and Order released July 20, 1960, FCC 60–891) which provided interim technical standards for use of microwave frequencies. Over the past decade, these rules have contributed to the development of microwave systems. Today, however, the rules need to be revised and updated to meet the demands of current and future developments. The number of private microwave stations has more than tripled to nearly 10,000 stations since 1960. Many of these stations tend to concentrate in microwave corridors producing "pockets" of congestion. At the same time, the need for frequencies for private microwave systems is increasing. This points to the necessity and timeliness for adoption of both stringent interference-prevention criteria and more realistic approaches to bandwidth assignments. There is also the impact of new techniques that have advanced to the point where performance of present-day microwave systems often exceeds rule requirements. New standards in this area are required which take into consideration advances in the state-of-the-art.

THE PRIVATE OPERATIONAL-FIXED RADIO SERVICE

3. In consideration of these factors, we propose to establish a separate radio service to standardize and consolidate rules to cover fixed operations above 952 MHz in a comprehensive format. The new service would be designated as the Private Operational-Fixed Microwave Radio Service. Basically, it provides changes that relate application and licensing procedures specifically to microwave systems; including elimination of some restrictions on interservice sharing,[2] permissible communications are clarified; frequency assignment criteria are incorporated; the bands are channelized; and technical standards are geared to minimizing intersystem interference. Further, additional uses are proposed for certain microwave bands below 10 GHz. For example, local area and business radio users are now restricted to use of bands above 10 GHz. Local area users would be permitted under these changes to use all microwave bands, and business radio users operating long-haul systems would be given access to the 2 and 6 GHz bands. The proposals are not concerned, however, with frequency reallocation matters, with the authorization of innovative operational techniques, or with uses that involve competitive or divergent interests. These latter areas are to be explored in separate rule making actions. Nor do we propose extensive modifications of presently authorized private microwave systems, and we have spe-

[1] Subsequent rule making actions have re-allocated the segment 890–947 MHz for land-mobile operations. First Report and Order in Docket 18262, 25 FCC 2nd 764 (1970). We are here concerned only with operations above 952 MHz.

[2] Note, however, that cooperative sharing of all private radio facilities is under consideration in Docket No. 19309, "Notice of Proposed Rule Making and Inquiry into Certain Arrangements for Cooperative Use of Private Microwave Systems," 31 FCC 766 (1971).

cifically included "grandfather" provisions in our proposals so that the impact on existing systems would be minimal.

CRITERIA FOR FREQUENCY ASSIGNMENTS

4. The requirement for continuous radiation of transmitters to provide the full-period service needed in most microwave systems does not normally permit time-sharing of frequencies by different systems. As a result, to provide the requisite frequencies, including those necessary for full-duplex communications, a planned program of channelization involving frequency pairing and channel spacing is a first consideration. Present rules make no provision for this type of channel assignment in the microwave bands with the exception of the 952–960 MHz band. Informally, however, the Commission has followed a channelling plan for the 1850–1990, 2130–2150, 2180–2200, 6575–6875, and 12,200–12,700 MHz bands. We propose to formalize these plans and, further, we propose channelling plans for all other microwave bands permitting fixed station operations.

5. Related to increasing the number of useful frequencies is the amount of emission bandwidth which will be authorized. Applicants have a choice of bandwidths ranging from 0.1 MHz at 952–960 to 20 MHz at 12,200–12,700 MHz and above. At 1850–1900 MHz, we are proposing an increase from 8 MHz to 10 MHz for maximum authorized bandwidth as being more consistent with the operations generally conducted in that band. Applicants will be required to match their requirements to an appropriate band and application procedures for demonstration of actual channel needs will have to be followed.

6. We have proposed, also, rules limiting an applicant to only one transmit frequency per path, per direction, to preclude acquisition of a wider bandwidth than a frequency band provides. As noted, requirements for bandwidths greater than 10 MHz are intended to be met above 10 GHz. We are aware, however, of some of the long-haul systems which may have bandwidth requirements in excess of 10 MHz. Applicants for these long-haul systems argue that the frequencies above 10 GHz are not suitable for their systems and that they require additional bandwidths in the 2 or 6 GHz bands. The Commission has, in the past, granted these applications based upon special showings of need. We are aware also of the present rule exception as to bandwidth applicable to closed circuit intercity educational television systems. To meet some of these special requirements, we propose to permit assignment of one or more additional transmitting frequencies when an applicant shows that the additional frequencies are required for his present or planned communication requirements and that technical factors preclude use of bands affording greater bandwidth (see proposed Section 94.15(d)). In addition, to help offset this additional spectrum demand, at least in the 6 GHz band, we feel consideration should be given to adding the sparsely utilized mobile segment 6525–6575 MHz to the operational fixed band 6575–6875. Comments on this allocation are requested, and suggestions are invited as to possible channelizing plans and/or retainment of some portion of the new band for mobile-only operations.

7. We have also proposed to limit the number of frequencies (not paths) an applicant may be granted at a single location to prevent a single licensee from blocking or restricting use of a particular site to other users of the same band. We view this restriction as being particularly necessary in metropolitan centers and in certain geographical mountain-top locations where, due to a combination of circumstances, the location offers unique advantages to microwave system planners.

8. To help achieve effective point-to-point service from microwave frequencies, there must be isolation between potentially interfering systems. Much of this isolation can be provided by geographical separation since microwave transmission is limited essentially to line-of-sight propagation. The use of highly directive antennas also provides effective isolation even to the point that, in certain configurations, co-channel operation at the same or near-same location by separate systems is possible. However, as private microwave usage has increased, with the concomitant demand for increased channel capacities and system reliability, the need for establishing different or at least updated criteria for the amount of isolation between systems has increased. It is generally accepted in this regard that the amount of interference which one microwave system can tolerate from another system is related to the level of such interference. The level of interference is dependent, among other things, upon the transmitter power and frequency stability, spectral distribution of the transmitted signal, type of multiplexing, antenna characteristics, and in the case of adjacent or near adjacent channel separations, the amount of such separation, i.e., the channel plan. This proposed rule-making addresses itself to microwave technical standards primarily as they relate to these areas. We are fully aware of the impact of receiver stability and selectivity characteristics upon the level of interference. However, microwave receiver specifications are not presently regulated by the Commission on a direct basis. Indirectly of course, these characteristics are regulated and affected by the specifications and within the environment of the other standards being considered.

9. As noted, a key factor affecting interference on co-channel and adjacent channel operation is the frequency stability of the interfering carrier. However, because the Commission has not heretofore specified stability for microwave transmitters and such a specification involves complications with regard to definition and enforcement, it is proposed to limit the specification to transmitter frequency tolerances. Consistent with the need to reduce the level of interference, we are proposing frequency tolerances that are substantially more rigid than present rules provide, and thus indirectly tighten frequency stability. However, most of the equipment currently being offered employs tolerances on this proposed order so that the more rigid standards should not be a burden to new licensees.[3]

10. The effect of modulation upon level of interference has also been considered, but we have determined not to limit the types of modulation of the radio frequency carrier. Most systems in service today em-

[3] Any manufacturer or licensee having equipment which he believes to be capable of compliance with all pertinent requirements without modification, or persons desiring to modify equipment for compliance with the new standards may submit to the Commission measurement data taken in accordance with the type acceptance procedures set forth in Part 2 of the Commission's Rules.

ploy frequency modulation, but there are systems still employing pulse modulation, amplitude modulation, or combinations of these. Nor do we intend to limit the type of multiplexing employed to modulate the main radio frequency carrier. While most systems use frequency division multiplexing of the single-sideband-suppressed-carrier (SSB–SC) type, there are still systems in service employing frequency-division-multiplex of the FM and AM varieties. Similarly, there are systems in service that use time-division multiplexing and recent trends indicate a resurgence of interest in this technique.[4] Thus, it would seem premature and unduly restrictive to limit either the type of modulation of the RF carrier or the multiplexing at this time. Data with respect to digitally modulated systems has been solicited by the Commission for use in formulating rules and interference criteria for stations licensed under Part 21.[4] To the extent that digital systems in the private services may differ from those in the common carrier bands, additional comments and recommendations are solicited.

11. The power and antenna limitations proposed represent a substantial departure from present rules. The rules now specify a maximum transmitter power but no limitation on the maximum effective radiated power. The proposed rules place an upper limit on this value. The values proposed as maximum should normally preclude diffraction or troposcatter propagation modes and yet not require the reduction in transmitter power of any presently authorized systems. Present rules also limit the minimum size of directional antenna systems (except where omni-directional transmission is authorized) by specifying maximum beamwidth permitted. These beamwidth provisions do not, however, satisfactorily meet the requirements in areas of heavy concentration of microwave systems. As was amply demonstrated in testimony submitted in connection with Docket 11866, narrower beamwidths greatly increase the number of systems that can be accommodated in a given area. Accordingly, this rulemaking proposes narrower beamwidths than the present rules provide for. In addition, directional antenna standards are proposed which specify limitations on the permissible radiation at angles from the center-line of the main beam. Two categories of antennas are proposed: Category A and Category B. The Category A standards provide for antennas with high front-to-back discrimination which can be particularly effective in permitting more systems to be accommodated in areas of high concentration of microwave stations. In areas of lower concentration of microwave stations, it is proposed to permit antennas meeting the Category B standard until such time as the growth of the microwave station population would require a change to the Category A antenna. In conjunction with these antenna standards, it is also proposed to authorize the polarization of the transmitted signal which is not now the case. This is in keeping with the application of interference criteria since it is necessary to know the polarization of the signal in order to determine antenna discrimination.

12. Periscope antenna systems will continue to be authorized only when meeting the proposed directional antenna standards. Admittedly,

[4] See *Digital Modulation Techniques in Microwave Radio*, Notice of Inquiry, Docket No. 19311, 36 F.R. 18660 (September 18, 1971), 31 FCC 2d 716 (1971); and *Digital Transmission of Microwave Radio*, Notice of Proposed Rule Making, Docket No. 19311, 38 F.R. 12750 (May 15, 1973), 40 FCC 2d 938 (1973).

the periscope has its advantages in some systems but these do not outweigh the disadvantages stemming from the present inability to predict the radiation pattern. Lacking this information, it is impossible to apply the interference criteria. The situation is rendered even more complex when there is a multiple installation of periscope reflectors on a single tower and they are illuminated by not only the radiation from the associated parabolic antenna but also the spillover from adjacent parabolic antennas. Existing systems employing a periscope system which does not meet the proposed directional antenna standards will be permitted to continue until January 1, 1980.

13. Passive repeaters will continue to be allowed. In fact we encourage their use when possible on the basis that more efficient use is made of the spectrum when a passive rather than an active repeater is used. However, a problem in this respect is related to having sufficient knowledge of the parameters of the passive repeater in the Commission's files to provide the information needed to perform an interference analysis. Presently, applicants file information regarding location of a passive repeater but rarely do they file details as to size or configuration. Accordingly, we are proposing to require applicants to furnish, in addition to the location now filed, details regarding size, orientation, re-radiated power, beamwidth, and other relevant factors. Comments are requested on this approach and as to whether passive repeaters should be treated in the Commission's files as a separate station for interference analysis purposes.

14. Compliance with the interference criteria being proposed is primarily dependent upon the availability of information regarding existing and pending private microwave systems. This information would be used by applicants to analyze potential interference to existing systems by new microwave operations. So that applicants can acquire the necessary data for their evaluation in this respect, the Commission plans to establish a data base as to the technical details of all microwave systems. The information will be developed from present records, from replies by applicants furnished on a revised version of the private microwave application Form 402, and from replies to a special questionnaire which the Commission intends to send to present licensees. The type of information to be developed will include, in addition to technical information now covered in Form 402, further details as to antenna parameters and polarization, median received signal level, frequency stability, channel capacity, pre-emphasis, passive repeaters, and such other details as relate to analysis of interference potential. This information will be made available to applicants through Commission offices. It is also proposed to require technical information filings for application reference for certain receivers and antennas in addition to the type acceptance now required for transmitters. Inasmuch as application of the interference criteria requires knowledge of the receiver and antenna characteristics, information about these characteristics would appear to assure uniform and readily available data as to those needing the information. On the other hand, industry has been applying interference criteria in the design of systems, obtaining the data from the equipment manufacturers. Collecting and managing this additional data would represent additional cost to the Commission. Comments are thus invited as to the merits of the

Commission having the data available, or each user obtaining the data from the original equipment manufacturer.

15. On the basis of the information which will be available to applicants, the Commission proposes to require that applicants for point-to-point private microwave facilities submit a certification that the proposed system will comply with the interference protection criteria, that all affected systems have been considered, and that such licensees should not, under normal propagation conditions be expected to receive interference from the proposed operations above the specified levels. It is not administratively practical, nor should it be necessary, for the Commission to verify each of these showings. Thus, although a certain amount of spot-checking is contemplated, the basic responsibility will be with the applicants and each license will be conditioned upon the validity of an applicant's representations with respect to interference.

SUMMARY

16. In accordance with the foregoing, the attached Appendix sets forth specific rule changes proposed for private operational-fixed microwave systems and basically establishes a new Part 94 in the Safety and Special Radio Services which is intended to cover present licensing and operation of these facilities as well as new uses which can be anticipated in the future. Base and mobile private microwave operations will continue to be covered by existing rules. Parts 81, 87, 89, 91 and 93 would be amended as required at such time as the Commission takes final action in this proceeding. Part 94 rules would include procedural and substantive rules for an independent radio service. The new rules would contain a liberalized approach to permissible communications, consistent with the nature and demands of private point-to-point microwave operations. The key, however, to adding new uses in microwave bands lies, we believe, in our proposals for optimizing the use which can be made of the frequencies available. To this end, we plan to establish a data base as to existing microwave operations that can be used by applicants to design their systems; applicants would be required to match their frequency requirements to appropriate frequency bands; a channeling plan is proposed that includes frequency pairing, channel spacing, and updated bandwidth requirements; and we are proposing non-interference criteria related to power, transmitter frequency tolerances, and antenna limitations which would be applied by applicants to afford protection to existing microwave operations.

17. As can be seen, these proposals are by no means a complete program for private microwave operations, nor are they so intended. However, within the limited framework of this proceeding, we believe that these rule changes are timely and, in the public interest, would promote the orderly and compatible growth of microwave systems. For the foregoing reasons, Notice of Proposed Rule Making is hereby given to establish a new Part 94 as the Private Operational-Fixed Microwave Radio Service. In so doing, specific rules contained in the proposed Part 94 cover the proposals submitted in a petition (RM-339) from the National Committee for Utilities Radio (NCUR) which seeks to relieve Power Radio Service licensees of complying with

the requirement for local area microwave users to operate above 10,000 MHz. Also covered is the rule change proposed by the National Association of Manufacturers (NAM) in its petition (RM–1862) for expanded permissible communications for microwave stations in the Manufacturers Radio Service. To the extent, therefore, that the proposals herein are consistent with the objectives of the petitioners, their petitions are *granted*, but, in all other respects inconsistent herewith, their petitions are *denied*. Further, the proposed rule changes set forth in Docket 14179—"In the Matter of Amendment of Parts 7, 9, 10, 11, and 16 [now 81, 87, 89, 91 and 93] of the Commission's Rules to provide for the assignment of frequencies in the bands above 952 MC to operational fixed stations in such services upon a showing that harmful interference will not be caused to existing stations"—are covered by proposals herein and that Docket, therefore, is terminated. Finally, RM–2272, a petition filed by the American Petroleum Institute recommending redesignation of the band 6525–6575 for operational fixed purposes, is also included within the context of this proceeding.

18. Authority for these proposed amendments, as set forth in the Appendix, is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

19. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules interested persons may file comments on or before February 28, 1974, and reply comments on or before March 29, 1974. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

20. In accordance with the provisions of Section 1.419 of the Commission's Rules an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

A new Part 94 in Volume V of the Commission's Rules is proposed to be added as follows:

FEDERAL COMMUNICATIONS COMMISSION

Rules and Regulations

VOLUME V

Part 94—Private Operational-Fixed Microwave Service

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SUBPART A—GENERAL INFORMATION

§ 94.1 Basis and purpose.

(a) The basis for the rules following in this part is the Communications Act of 1934, as amended, and applicable treaties and agreements to which the United States is a party. The rules in this part are issued pursuant to the authority contained in Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) The purpose of the rules in this part is to prescribe the manner in which operational-fixed radio facilities may be licensed and operated in the microwave spectrum above 952 MHz.

§ 94.3 Definitions.

For the purpose of this part, the following definitions shall be applicable. For other definitions, refer to Part 2 of this chapter, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

Antenna input power—the radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

Control station—a fixed station whose transmissions are used to control automatically the emissions or operations of another radio station in the mobile services at a specific location.

Effective radiated power (ERP)—the power supplied to the antenna multiplied by the relative gain of the antenna in a given direction, over that of an isotropic radiator. For purposes of this part, expressed decibels, referenced to 1 milliwatt, (dBm), in the direction of the radiation main lobe.

Fixed relay station—an operational-fixed station associated with one or more stations in the mobile service, established to receive radio signals directed to it and to retransmit them automatically on a fixed service frequency.

Fixed service—a service of radiocommunication between specified fixed points.

Fixed station—a station in the fixed service.

Frequency tolerance—the maximum permissible departure by the center frequency of the frequency band occupied by an emission from the assigned frequency, or by the characteristic frequency of an emission from the reference frequency. The tolerance is expressed in parts per million or in hertz.

Long haul system—a system in which the total of the tandem path lengths exceeds 250 miles.

Microwave—for purposes of this part, frequencies above 952 MHz.

Necessary Bandwidth—For a given class of emission, the minimum value of the occupied bandwidth sufficient to insure the transmission of information at the rate and with the quality required for the system employed, under specific conditions. Emissions useful for the good functioning of the receiving equipment, as, for example, the emission corresponding to the carrier of reduced carrier systems, shall be included in the necessary bandwidth.

Note: The necessary bandwidth may be determined by methods outlined in paragraph 2.202 of this chapter.

Occupied Bandwidth—the frequency bandwidth such that, below its lower and above its upper frequency limits, the mean powers radiated are each equal to 0.5 percent of the total mean power radiated by a given emission. In some cases, for example multi-channel frequency division systems, the percentage of 0.5 percent may lead to certain difficulties in the practical application of the definitions of occupied and necessary bandwidth; in such cases a different percentage may prove useful.

Operational-fixed station—a fixed station not open to public correspondence, operated by and for the sole use of those persons or agencies operating their own radiocommunication facilities. (This term includes all stations licensed in the fixed service under this part.)

Passive repeater—a passive antenna element or elements, located so as to reflect or redirect the radiation from or to a directional transmitting or receiving antenna in a horizontal or near horizontal plane to a horizontal or near horizontal plane.

Periscope antenna system—a passive antenna element located so as to reflect or redirect the radiation from or to a directional transmitting antenna from the vertical or near vertical plane to the horizontal or near horizontal plane.

Rated power output—the term "rated power output" of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

Short haul system—a system in which the total of the tandem path lengths is 250 miles or less.

§ 94.5 Eligibility.

Any person, association, or governmental entity or agency that is eligible for licensing in any radio service covered under Parts 81, 87, 89, 91, and 93, is eligible to hold an authorization in this service.

§ 94.7 General Citizenship Restrictions.

A station license may not be granted to or held by:

(a) Any alien or the representative of any alien;

(b) Any foreign government or the representative thereof;

(c) Any corporation organized under the laws of any foreign government;

(d) Any corporation of which any officer or director is an alien;

(e) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: Aliens or their representatives, a foreign government or representative thereof, or any corporation organized under the laws of a foreign country;

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(g) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by: Aliens or their representatives, a foreign government or representative thereof, or any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

§ 94.9 Permissibility of Communications.

(a) Except as provided in paragraph (b) of this section, stations in this radio service are authorized to transmit:

(1) The licensee's own communications;

(2) The communications of other parties in accordance with § 94.17 of this part;

(3) Communications with other licensees required for coordination of activities;

(4) Emergency communications in accordance with § 94.11 of this part.

(b) The radio facilities shall not be used for any of the following purposes:

(1) Rendition of a communications common carrier service;

(2) Transmission of program material for use in connection with broadcasting, except that: the facilities of closed circuit educational television systems that have been licensed to educational institutions may be utilized for the transmission of program material to noncommercial educational television broadcast stations, provided that the use of the facilities exclusively for carrying such program material shall be less than 50 percent of their total use during any one year of the license period, no charge either direct or indirect shall be made for such use, and licensees shall submit reports with their applications for renewals showing the breakdown of usage in terms of primary and alternate uses during each year of the license term.

(3) For relay of television, standard, or FM broadcast signals to community antenna television systems (CATV), except for operations of this nature authorized prior to February 1, 1976, pursuant to § 94.25(g).

§ 94.11 Points of Communication.

(a) Stations authorized in this service may communicate with associated operational-fixed stations and fixed receivers and with units of associated stations in the mobile service licensed under Safety and Special rule parts. In addition, intercommunication is permitted with other licensed stations and with U.S. Government stations in those cases which require cooperation or coordination of activities or when cooperative use arrangements in accordance with § 94.17

are contemplated; *provided, however*, that where communication is desired with stations authorized to operate under the authority of a foreign jurisdiction, prior approval of this Commission must be obtained; *and provided further*, that the authority under which such other stations operate does not prohibit the intercomunication.

(b) During a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, stations may be used for emergency communications unrelated to the licensee's activities in accordance with the following:

(1) As soon as possible, after the beginning of such emergency use, notice must be sent to the Commission in Washington, D.C., and to the Engineer in Charge of the Radio District in which the station is located, stating the nature of the emergency and the use to which the station is being put;

(2) The emergency use of the station must be discontinued as soon as substantially normal communication facilities are again available, and the Commission in Washington, D.C., and Engineer in Charge must be notified immediately when such special use of the station is terminated; and,

(3) The commission may at any time order discontinuance of such special use of the authorized facilities.

§ 94.13 Interconnection with Common Carrier Facilities

Stations authorized under this part may be interconnected with the facilities of common carriers subject to applicable tariffs.

§ 94.15 Policy Governing the Assignment of Frequencies.

(a) Frequencies in this service are assignable to provide the full-period service required in most private systems, and assignments shall be protected from interference in the manner and to the extent prescribed in this subpart. However, where full-period service is not needed by the licensee, the same frequencies may be assigned to another licensee in the same area on a scheduled, time-sharing basis.

(b) An applicant for new or modified facilities shall show that his proposed stations will not cause interference to existing authorized stations beyond that permitted by the interference criteria prescribed in this subpart, or that the licensees of the existing stations have agreed, in writing, to a different degree of interference.

(c) All applicants shall make an engineering analysis of the potential interference between the proposed facilities and previously authorized and filed facilities. The applicant shall include as supplemental information with the application, a statement containing: (1) a certification to the effect that, based upon the frequency engineering analysis, the potential interference to existing and previously proposed facilities shall not exceed that prescribed by the interference criteria in this subpart; or (2) if the potential interference is to exceed that prescribed by § 94.63, a statement to the effect that all the parties affected have agreed to accept the higher level of interference. In either case, the applicant shall furnish the names of the licensees of the stations which were considered in conducting the engineering analysis. Further, applicants and licensees shall cooperate promptly and fully in the exchange of technical information necessary to performing frequency engineering analyses, and in the event of technical differences, cooperate in resolving these differences.

(d) Applicants shall select the frequency band having available frequencies where the assignable bandwidth is most consistent with the proposed communication requirements. Applications shall contain supplemental information showing the basis for frequency band selection, the basis for the bandwidth requested, and the proposed schedule for implementation of bandwidth utilization. Consistent with this policy, each applicant normally will be authorized one transmit frequency per path in each direction where full duplex operation is required. Additional frequencies per path may be authorized only upon a showing that: (1) the additonal frequencies are required to accommodate the applicant's present and planned communications requirements, and technical factors preclude use of the bands affording greater assignable bandwidths (For the purposes of this requirement, technical factors to be considered in determining whether a frequency band is suitable for a proposed operation include: reasonable reliability objectives of the applicant; propagation characteristic of the band; atmospheric conditions in the proposed area of operation, such as rain fall and extreme temperature changes that may affect propagation outages; total path length of the proposed system; availablility of radio equipment (but not its cost); and

the relative availability of frequencies in the band where frequencies are requested and in the band where greater assignable bandwidth is available.); or (2) expansion of previously authorized systems beyond the capacity originally contemplated is required.

(e) Applicants will normally be assigned the frequencies listed in Section 94.65 of this part. Operation on other than the listed frequencies may be authorized where it is shown that the interference criteria requirements prescribed in § 94.63 could not otherwise be met, or where amplitude modulation techniques are authorized. Additionally, on frequency bands above 10,000 MHz, multiple transmitting frequencies may be authorized on a case-by-case basis within a single standard bandwidth.

(f) Frequencies will normally be assigned in pairs for those stations employing full-duplex transmission, with one of the frequencies designated as the station transmit frequency and the other as the receive frequency. Provisions is made in some bands for non-paired frequencies for systems employing half-duplex transmission. However, operation on frequencies not paired in accordance with the frequency pairing plans of this part will be authorized only upon a showing that the interference criteria of this part could not be met without a departure from these plans.

(g) Applicants requiring more than one pair of frequencies at a single station location will normally be required to employ one end of the frequency band selected for all TRANSMIT frequencies at that location and the other end of the band for all RECEIVE frequencies at that location.

(h) Applicants for new stations requiring multiple transmit frequencies employed on separate paths from a single station location will be authorized not more than one-fourth of the paired transmit frequencies available in the band.

§ 94.17 Cooperative use of stations.

(a) Licensees and persons eligible to become licensees of stations under this part may make cooperative use of such licensed facilities under the conditions and subject to the limitations specified in this section.

(b) The cooperative use of licensed facilities is authorized only on frequencies for which all participants would be separately eligible for assignment.

(c) Licensed facilities may be cooperatively used under this section only (1) without cost to any of the participants in its use, or (2) on a non-profit, cost-sharing basis pursuant to a written contract between the parties involved which provides that the licensee shall have control of the licensed facilities and that contributions to capital and operating expenses are accepted only on a cost-sharing, non-profit basis, prorated equitably, among all participants using the facilities, or (3) on a reciprocal basis (i.e., use of one licensee's facilities in exchange for the use of another licensee's facilities) without charge for either capital or operating expense, pursuant to a written contract between the licensees involved.

(d) Each licensee sharing its facilities under this section shall maintain records showing the cost of the facilities and their operation and use, the charges made to and payments made by each of those using the facilities or contributing to their capital cost or operating expense, and the information specified below, and such records shall be available for inspection by the Commission.

(e) Each licensee sharing its facilities under this section shall file a notification with the Commission 30 days prior to the use of its facilities by any other person that has not been specified in its license application or in a prior notification to the Commission, containing the following information:

(1) Name and description of the licensee;

(2) Call sign of the station or stations;

(3) The radio service in which the station is licensed;

(4) The names of all prospective participants in the cooperative use of the station and a description of each participant sufficient to show its eligibility for participation under this section and its eligibility to use the frequencies assigned to the station; and,

(5) A copy of the contract between the parties for the cooperative use of the facilities.

(f) The licensee may institute the service described in the notification filed pursuant to paragraph (e) of this section 30 days after filing unless the Commission during that period notifies the licensee that the information supplied is inadequate or that the proposed service is not authorized under these regulations, and the licensee shall then have the right to amend or to file another notification

to remedy the inadequacy or defect and to institute service 30 days thereafter, or at such earlier date as the Commission may set upon finding that the inadequacy or defect has been remedied.

(g) Each licensee sharing its facilities under this section on a non-profit, cost-sharing basis shall file an annual report with the Commission, using FCC Form 402–A, within 90 days of its fiscal year, containing:

(1) A financial statement of operations during the preceding fiscal year in sufficient detail to show compliance with the requirements of this section;

(2) The names of those who have shared the use of the facilities during the preceding fiscal year;

(3) A brief statement as to the use of the facilities made by each person sharing the use and an estimate of the approximate percentage of use by each participant during the preceding fiscal year; and

(4) Any change in the items previously reported to the Commission, concerning such facilities or their use in the application for the license or in a notification of this section.

(h) When radio facilities are shared under the provisions of this section without charge and without any other consideration from any other participants, or on a reciprocal basis, or when the facilities are shared solely by governmental entities, in lieu of the statements required to be filed by paragraph (g) of this section, the licensee shall file with the Commission within 90 days after the close of his fiscal year a statement advising the Commission of that fact.

(i) The licensee shall inform the Commission whenever the cooperative use of any of its facilities in accordance with this section is permanently discontinued.

Subpart B—Applications, Authorizations, and Notifications

§ 94.23 Station Authorization Required.

No radio transmitter shall be operated in this service except under and in accordance with a proper station authorization granted by the Federal Communications Commission.

§ 94.25 Filing of Applications.

(a) Persons desiring to install and operate radio transmitting equipment must submit an application for a radio station authorization. To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the private operational-fixed radio stations are described in § 94.27, and may be obtained from the Washington, D.C. office of the Commission, or from any of its engineering field offices. Concerning matters where no standard form is applicable, the informal application procedure outlined in § 94.27 should be followed.

(b) Every application for a radio station authorization, and all correspondence relating thereto, shall be submitted to the Commission's office at Washington, D.C. 20554. Each application shall be accompanied by the fee prescribed in Subpart G of Part 1 of the Commission's Rules.

(c) Unless otherwise specified, an application shall be filed at least sixty days prior to the date on which it is desired that Commission action thereon be completed.

(d) Applications involving operation at temporary locations:

(1) An application for authority to operate a fixed station at temporary locations shall specify the general geographic area within which the operation will be confined. The area specified may be a city, a county or counties, or a state or states. Sufficient data must be submitted to show the need for the proposed area of operation.

(2) If an operational-fixed station is authorized to be operated at temporary locations and actually remains, or is to remain, at the same location for a period of over a year, application for a separate authorization specifying the fixed location, shall be made as soon as possible but not later than 30 days after the expiration of the one-year period.

(e) Applicants proposing to construct a radio station on a site located on land under the jurisdiction of the U.S. Forest Service, U.S. Department of

Agriculture, or the Bureau of Land Management, U.S. Department of the Interior must supply the information and must follow the procedure prescribed by § 1.70 of this chapter.

(f) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for a station authorization other than mobile, temporary base, or temporary-fixed seeking a station license for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west shall at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity, if any, proposed frequency, type of emission and power. In addition, the applicant shall indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(g) Applications for authorizations to construct new microwave operational-fixed radio stations for relaying television, standard, or FM broadcast signals to community antenna television (CATV) systems, will not be accepted. Existing systems authorized prior to November 22, 1965, may continue to be authorized under this part until not later than February 1, 1976, or until an earlier date if the Commission determines that the frequencies in the 12200–12700 MHz band are needed for operational-fixed stations, subject to the following:

(1) No additional stations or frequencies will be authorized;

(2) Replacement of equipment may be authorized only if the new equipment is type accepted for operation in the 12700–12950 MHz band;

(3) Authorizations and renewals thereof may be granted for a term not exceeding one year;

(4) Authorizations and renewals shall contain the condition that such cable television systems shall operate in compliance with the provisions of Part 76 (Cable Television Service) of this chapter.

(5) Applications shall contain a statement that the applicant has notified the licensee or permittee of any television broadcast station within whose predicted Grade B contour the cable television system served or to be served operates or will operate; the licensee or permittee of any 100-watt or higher power television translator station licensed to the community of the system; and any local or state educational television authorities, of the filing of the application. Such statement of the applicant shall be supported by copies of the letters of notification. The notice shall include the fact of intended filing by the applicant, the name and mailing address of each cable television system served or to be served under the authorization sought, the community and area served or to be served by each cable television system, and the television signals to be carried by each cable television system.

NOTE: As used in this subparagraph, the term "predicted Grade B contour" means the field intensity contour defined in § 73.683(a) of this chapter, the location of which is determined exclusively by means of the calculations prescribed in § 73.684 of this chapter.

§ 94.27 Application and Standard Forms.

(a) A separate application shall be submitted on FCC Form 402 for the following:

(1) New station authorization for private operational-fixed microwave station.

(2) New station authorization for a fixed station to be operated at temporary locations in this service.

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(3) Modification of station license.
(4) Assignment of an authorization (See paragraph (b) of this section and § 94.47.)

(b) When the holder of a station authorization desires to assign to another person the privilege to use a radio station, he shall submit to the Commission a letter setting forth his desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of station. This letter shall also include a statement that the assignor will submit his current station authorization for cancellation upon completion of the assignment. Enclosed with this letter shall be an application for Assignment of Authorization on FCC Form 402, prepared by and in the name of the person to whom the station is being assigned.

(c) A separate application shall be submitted on FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a licensee.

(d) Informal application—an application not submitted on a standard form prescribed by the Commission is considered to be an informal application. Each informal application, normally in letter form, properly signed, shall be clear and complete within itself as to the facts presented and the action desired.

(e) FCC Form 456 "Notification of Completion of Radio Station Construction," may be used to advise the Engineer-in-Charge of the local district office that construction of the station is complete and that operation will begin.

(f) Application for renewal of station license shall be submitted on FCC Form 405A. Applications for renewal must be made during the license term and should be filed within 90 days, but not later than 30 days prior to the end of the license term. In any case in which the licensee has, in accordance with the provisions of this chapter, made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

§ 94.29 Who May Sign Applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant if the applicant is an individual; by one of the partners if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible governmental entities shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his absence from the United States. The attorney shall, in that event, separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge) he shall separately set forth his reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be signed under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code Title 18, Section 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to Section 312(a)(1) of the Communications Act of 1934, as amended.

§ 94.31 Supplemental Information to be Submitted with Application.

Each application for station authorization shall be accompanied by the supplemental information listed below.

(a) Any statements or showings required by the applicable subpart of this part, in connection with the use of a frequency requested (See § 94.63);

(b) A functional system diagram and a detailed description of the manner in which the interrelated stations will operate when the station is, or will be, part of a system involving two or more stations at different fixed locations;

(c) Copies of all agreements and statements which may be required under § 94.17 if operation is desired in connection with any cooperative use of the proposed radio communication facilities;

(d) Statements required by the rules in connection with developmental operation (See Subpart E of this part.);

(e) Data required by the rules in connection with operation of fixed stations at temporary locations (See § 94.27(a)(2));

(f) Any statements or other data required under special circumstances as set forth in this part, or required upon request by the Commission.

(g) Information required by Section 1.70 of this chapter.

(h) Information required by Part 17 of the Commission's Rules "Construction, Marking, and Lighting of Antenna Structures" as required.

§ 94.33 Preliminary Processing of Applications.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing.

(b) Applications which are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character shall be deemed to be defective and may be returned to the applicant with a brief statement as to such defects. In addition, if an applicant is requested by the Commission to file any additional documents or information not included in the prescribed application form, failure to comply with such request will be deemed to render the application defective, and such application may be dismissed. Applications will also be deemed to be defective and may be returned to the applicant in the following cases:

(1) Statutory disqualification of applicant, e.g., aliens under Section 310 of the Communications Act of 1934, as amended;

(2) Proposed use or purpose of station would be unlawful;

(3) Requested frequency is not allocated for assignment for the service proposed.

(c) Applications which are not in accordance with the provisions of this chapter, or other requirements of the Commission, will be considered defective and may be dismissed unless accompanied by a request of the applicant for waiver of, or exception to, any rule, regulation, or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired, and set forth the reasons in support thereof to include a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules. Applications may be dismissed if the accompanying petition for waiver of rules does not set forth reasons which, sufficient if true, would justify a waiver or exception.

§ 94.35 Amendment or Request for Dismissal of Application.

(a) Any application, except for mutually exclusive applications or those against which a petition to deny has been filed, may be amended as a matter of right at any time prior to the time the application is granted or designated for hearing. Each amendment to an application shall be signed and submitted in the same manner as required for the original application. The procedures for amending applications mutually exclusive under this part, applications against which a petition to deny has been filed, and applications designated for hearing are set forth in § 1.918 of this chapter.

(b) Any application may, upon written request signed by the applicant or his attorney, be dismissed without prejudice as a matter of right prior to the time the application is granted or designated for hearing.

§ 94.37 Grant of Application without Hearing.

(a) The Commission will grant without a hearing an application for a station authorization if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleading filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any existing license;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(b) If a petition to deny an application has been filed pursuant to § 1.962 and the Commission grants such application pursuant to paragraph (a) of this section, the Commission will deny the petition and issue a concise statement of the reason for such denial and disposing of all substantial issues raised by the petition. (See § 1.973 of this chapter, as to applications designated for hearing.)

§ 94.39 License Term.

(a) Licenses for stations in this service will normally be issued for a term of five years from the date of original issuance, modification, or renewal, except that, in some instances, a term of from one to five years will be applied, the term varying as may be necessary to permit the orderly scheduling of renewal applications.

(b) Authorizations for stations engaged in developmental operation under subpart E of this part will be issued upon a temporary basis for a specific period of time, but in no event to extend beyond one year from date of grant.

§ 94.41 Partial Grant of Applications.

Where the Commission, without a hearing, grants any application in part, or with any privileges, terms or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing. (See § 1.973 of this chapter as to applications designated for hearing.)

§ 94.43 Procedure for Obtaining Special Temporary Authority.

Authorizations in this service are granted in accordance with procedures set forth in this subpart. Therefore, temporary authorizations which depart from these procedures will not normally be considered except as specified below:

(a) Special temporary authorization may be granted upon a written request (See requirements for informal applications in § 94.27(d).) in the following circumstances:

(1) In emergency situations;

(2) To permit restoration or relocation of existing facilities to continue communication services;

(3) To conduct tests to determine necessary data for the preparation of an application for regular authorization;

(4) For a temporary non-recurring service where a regular authorization is not appropriate.

(b) The public notice requirements of Section 1.962 of this chapter do not apply to the following requests:

(1) To a non-renewable special temporary authorization for 30 days where an application for regular operation is not contemplated;

(2) To a non-renewable special temporary authorization for 60 days pending or after the filing of an application for regular operation.

NOTE: These temporary authorizations may not be extended unless the public notice requirements have been met.

(c) When an application for regular operation has been filed and is subject to the public notice requirements of Section 1.962 of this chapter, then, notwithstanding such requirement, if the grant of such application is otherwise authorized by law and there are extraordinary circumstances requiring emergency operations in the public interest and delay in the institution of such emergency operations would seriously prejudice the public interest, grant of a temporary authorization may be for a period not exceeding ninety days, except that, upon like findings, such temporary authorization may be extended for an additional period not to exceed ninety days.

(d) Request for special temporary authority shall contain the following information:

(1) Name, address, and citizenship status of applicant.

(2) Need for special action, including a description of any emergency or damage to equipment.

(3) Type of operation to be conducted.

(4) Purpose of operation.
(5) Time and date of operation desired.
(6) Class of station and nature of service.
(7) Location of station and points with which station will communicate.
(8) Equipment to be used, specifying manufacturer, model number, and number of units.
(9) Frequency(s) desired.
(10) Azimuth and beamwidth of major lobe of transmitting antenna and ERP.
(11) Type of emission.
(12) Description of antenna to be used, including height.

§ 94.45 Changes in Authorized Stations.

(a) Prior Commission approval is required before the following changes are made in authorized stations:
(1) Any addition or change in frequency (except deletion of a frequency);
(2) Any change in antenna azimuth;
(3) Any change in antenna beamwidth;
(4) Any change in antenna location greater than 5 seconds;
(5) Any change in antenna location of less than 5 seconds but also involving a requirement for special aeronautical study;
(6) Any change in antenna polarization;
(7) Any increase in antenna height;
(8) Any change in the size of passive reflectors or repeaters associated with the facilities of an authorized station;
(9) Any increase in emission bandwidth beyond that authorized;
(10) Any change in the type of emission;
(11) Any increase in authorized power in excess of a 2-to-1 ratio;
(12) Substitution of equipment having different stability.

(b) When the name of the licensee is changed (without changes in the ownership, control, or corporate structure), or when the mailing address is changed (without changing the authorized location of the base fixed station or the area of operation of mobile stations) a formal application for modification of license is not required. However, the licensee shall notify the Commission promptly of these changes. The notice, which may be in letter form, shall contain the name and address of the licensee as they appear in the Commission's records, the new name and/or address as the case may be, the call signs and classes of all radio stations authorized to the licensee under this part and the radio service in which each station is authorized. The notice shall be sent to: (1) Secretary, Federal Communications Commission, Washington, D.C. 20554, and (2) the Engineer in Charge of the radio district in which the station is located, and a copy shall be maintained with the license of each station until a new license is issued.

§ 94.47 Transfer and Assignment of Station Authorization.

A station authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly disposed of by transfer of control of any corporation holding such authorization, to any person, unless the Commission shall, after securing full information, decide that said transfer is in the public interest. (See § 94.27(b) for standard forms and procedures required for assignment of station licenses.)

§ 94.49 Report of Temporary Location.

The Engineer in Charge of each radio district wherein temporary operation by an operational fixed station is authorized shall be notified of such inter-district operating authority only at such time as the initial or modified authorization for such operation is granted by the Commission.

§ 94.51 Time in Which Station Must Be Placed in Operation.

The station authorized must be placed in operation within eight months from the date of grant or the authorization shall be invalid and must be returned to the Commission for cancellation. Requests for extension may be granted upon a showing of good cause, setting forth in detail the applicants' reasons for failure to place the facility in operation in the prescribed eight-month period. Such requests must be submitted no later than 30 days prior to the end of the eight-month period.

§ 94.53 Discontinuance of Station Operation.

In case of permanent discontinuance of operation of a station licensed under this part, the licensee shall forward the station license to the Washington, D.C., office of the Commission for cancellation. A copy of the request for cancellation of the license shall be forwarded to the Commission's Engineer in Charge of the district in which the station is located. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

§ 94.54 Notification of Station Being Placed in Operation or Being Discontinued.

The Engineer in Charge of each radio district in which an operational-fixed station is located and the Commission in Washington, D.C. shall be notified when the station has been initially placed in operation, and when operation is permanently discontinued.

§ 94.55 Continued Operation Subsequent to Modification.

Operation in accordance with the provisions of an authorization which has been modified may be continued until such modifications can be implemented, *provided* that the provisions of Paragraphs 94.51 and 94.53 are met.

SUBPART C—MICROWAVE TECHNICAL STANDARDS

§ 94.61 Applicability.

(a) The technical standards contained in this subpart shall govern, effective ———, the issuance of authorizations for private operational-fixed stations operating in the microwave bands above 952 MHz. Except as provided in § 94.65(j), stations authorized prior to this date not meeting the provisions of this subpart may continue to be authorized under previous technical standards until January 1, 1980.

(b) The frequency bands to which this subpart apply are as follows:

Frequency band (MHz):	*Class of stations*
952 to 960	Operational-fixed.
1850 to 1990 [1]	Do.
2130 to 2150	Do.
2150 to 2160	Do.
2180 to 2200	Do.
2450 to 2500 [2 3]	Fixed, mobile radio.
2500 to 2690	Operational-fixed.
6575 to 6875 [1]	Do.
12,200 to 12,700	Do.
13,200 to 13,250 [4]	Mobile fixed.
17,700 to 19,700 [4]	Do.
21,200 to 22,000 [4]	Do.
22,000 to 23,600 [4]	Do.
31,000 to 31,200 [4]	Do.
38,600 to 40,000 [4]	Do.

[1] Except for those persons employing long-haul systems as defined in this Part, this band is not available for operations by persons where sole basis for eligibility in this service is established under the eligibility requirements of § 91.551(a) for licensing in the Business Radio Service.

[2] Subject to no protection from Industrial, Scientific and Medical (ISM) equipment on 2450 MHz.

[3] Classes of stations other than Operational Fixed may be authorized in this frequency band under rules set forth in other Safety and Special Radio Services.

[4] Limited to developmental operation only with the assigned frequency and particulars of operation specified in each authorization. (See Subpart E of this part.)

§ 94.63 Interference Protection Criteria.

(a) Existing or previously authorized stations in this service shall be afforded protection from interference by applicants for new or modified facilities to the extent provided herein.

(b) Before filing an application for new or modified facilities, the applicant shall perform a frequency engineering analysis to ascertain that the facilities will not expose existing or previously authorized facilities to interference of a magnitude greater than that specified in the applicable criteria, unless otherwise agreed to in accordance with the provisions of § 94.15(c). Further, the applicant

is responsible for analyzing the potential interference to his proposed facilities from those existing or previously authorized facilities.

(c) The interference protection criteria which the existing or previously authorized microwave relay system shall be afforded is as follows:

(1) *Long-haul FM–FDM.* Analog systems in which the total of the tandem path lengths exceeds 250 miles, and where the system employs a frequency modulated radio, and frequency division multiplexing (FM–FDM) is employed to provide multiple voice channels; the allowable interference level per exposure:

(i) Due to sideband-to-sideband interference shall not exceed 5 pwpO.[1]

(ii) Due to carrier beat interference shall not exceed 50 pwpO per exposure.[1]

(2) *Short-haul FM–FDM.* Analog systems in which the total of the tandem path lengths is 250 miles or less, and where the system employs a frequency modulated radio and frequency division multiplexing (FM–FDM) is employed to provide multiple voice channels; the allowable interference level per exposure:

(i) Due to sideband-to-sideband interference shall not exceed 25 pwpO.[1 2]

(ii) Due to carrier beat interference shall not exceed 50 pwpO.[1 3]

(3) *FM–TV.* Analog systems employing frequency modulated radio modulated by a standard television (visual) signal; the allowable interference level per exposure shall not exceed the levels which would appy to a long-haul or short-haul FM–FDM system, as outlined in (2) or (3) above for a system with 600 voice channel capacity.

(4) *Time Division Multiplexing (TDM).* Systems where the radio is modulated by time division multiplexing to provide multiple voice channels; the allowable interference level per exposure shall be equivalent to that specified in (1) or (2) above.

(d) In addition to the requirements of 94.63(c), the adjacent channel interference protection criteria which the existing or previously authorized microwave relay system shall be afforded, regardless of system length, or type of modulation, multiplexing, or frequency band, shall be such that the interfering signal shall not produce more than a 1.0 dB degradation of the practical threshold of the protected receiver.

(e) The criteria specified in subparagraph (c) of this section shall be applied by calculating the ratio in dB, between the desired (carrier) signal and the undesired (interfering) signal (C/I ratio) appearing at the input to the receiver under investigation (victim receiver). The development of the C/I ratios from the criteria and the methods employed to perform path calculations shall follow procedures contained in EIA Bulletin 10, "Interference Criteria for Microwave Systems in the Safety and Special Radio Services." (Published by the Electronics Industries Association Engineering Department, 2001 Eye Street NW., Washington, D.C. 20006.) Where the applicants proposed facilities are of a type not included in subparagraph (c) of this section or where the development of the carrier to interference (C/I) ratio is not covered by EIA Bulletin 10, the applicant shall, in the absence of criteria or a developed C/I ratio, employ the following C/I protection ratios:

(1) Co-channel interference: both sideband and carrier beat, applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB, except in the 952–960 MHz band where it shall be 65 dB.

(2) Adjacent channel interference: applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB, except in the 952–960 MHz band where it shall be 43 dB.

§ 94.65 Frequencies.

Frequencies normally available for assignment in this service are set forth with applicable limitations in the following Tables:

(a) *952–960 MHz*

[1] Picowatts (pwpO) of absolute noise power, psophometrically weighted, appearing in an equivalent voice band channel of 300–3400 Hertz.

[2] 250 pwpO in the 952–960 MHz band.

[3] 1000 pwpO in the 952–960 MHz band.

TABLE I.—*Paired Frequencies*

Transmit (or receive)	*Receive (or transmit)*
956.4 [1]	952.8
956.5 [1]	952.9
956.6	953.0
956.7	953.1
956.8	953.2
956.9	953.3
957.0	953.4
957.1	953.5
957.2	953.6
957.3	953.7
957.4	953.8
957.5	953.9
957.6	954.0
957.7	954.1
957.8	954.2
957.9	954.3
958.0	954.4
958.1	954.5
958.2	954.6
958.3	954.7
958.4	954.8
958.5	954.9
958.6	955.0
958.7	955.1
958.8	955.2
958.9	955.3
959.0	955.4
959.1	955.5
959.2	955.6
959.3	955.7
959.4	955.8
959.5	955.9
959.6	956.0
959.7	956.1
959.8 [1]	956.2
959.9 [1]	956.3

Unpaired Frequencies

952.1 [2]	[3] 952.5
952.2 [2]	[3] 952.6
952.3 [2]	[3] 952.7
952.4 [2]	[3] 952.7

[1] Available for duplex operation on the paired frequencies with omnidirectional operation on the higher frequency of the pair and directional operation on the lower frequency of the pair, for purposes other than the control of traffic signals.

[2] Available for simplex operation, for purposes other than control of traffic signals, with omnidirectional operation authorized at one station and directional operation at all others.

[3] Available only for omnidirectional usage to control traffic signals.

(b) *1850–1990 MHz*

TABLE II.—*Paired Frequencies*

Transmit (or receive)	*Receive (or transmit)*
1855.0	1935.0
1865.0	1945.0
1875.0	1955.0
1885.0	1965.0
1895.0	1975.0
1905.0	1985.0

Unpaired Frequencies[1]

1915.0
1925.0

[1] Available for systems employing half-duplex (one-way) transmission.

(c) *2130–2150 MHz; 2180–2200 MHz*

TABLE III.—*Paired Frequencies*

2130–2150 MHz Receive (or transmit)	*2180–2200 MHz Transmit (or receive)*
2130.8	2180.8
2131.6	2181.6
2132.4	2182.4
2133.2	2183.2
2134.0	2184.0
2134.8	2184.8
2135.6	2185.6
2136.4	2186.4
2137.2	2187.2
2138.0	2188.0
2138.8	2188.8
2139.6	2189.6
2140.4	2190.4
2141.2	2191.2
2142.0	2192.0
2142.8	2192.8
2143.6	2193.6
2144.4	2194.4
2145.2	2195.2
2146.0	2196.0
2146.8	2196.8
2147.6	2197.6
2148.4	2198.4
2149.2	2199.2

(d) *2150–2160 MHz:* Specific frequency of operation to be set forth in authorization. Omnidirectional transmission only may be authorized, subject to providing protection from harmful interference to previously authorized stations in this service and in other services sharing this band.

(e) *2450–2500 MHz:* This band is shared with base, mobile, and radiolocation stations and is subject to no protection from interference from Industrial, Scientific and Medical devices operating on 2450 MHz.

TABLE IV.—*Paired Frequencies*

Transmit (or receive)	*Receive (or transmit)*
2451.9	2476.3
2452.7	2477.1
2453.5	2477.9
2454.3	2478.7
2455.1	[1] 2479.5
2455.9	2480.3
2456.7	2481.1
2457.5	2481.9
2458.3	2482.7
2459.1	2483.5
2459.9	2484.3
2460.7	2485.1
2461.5	2485.9
2462.3	2486.7
2463.1	[1] 2487.5
2463.9	2488.3
2464.7	2489.1
2465.5	2489.9

See footnote at end of table.

TABLE IV.—*Paired Frequencies*—Continued

Transmit (or receive)	*Receive (or transmit)*
2466.3	2490.7
2467.1	2491.5
2467.9	2492.3
2468.7	2493.1
2469.5	2493.9
2470.3	2494.7
2471.1	[1] 2495.5
2471.9	2496.3
2472.7	2497.1
2473.5	2497.9
2474.3	2498.7
2475.1	2499.5

[1] Consideration will be given on a case-by-case basis to assigning these frequencies to systems employing wide-band (8.0 MHz) transmissions provided that such transmissions will not result in harmful interference to previously authorized systems operating in this band.

(f) *2500–2690 MHz:* The television channels 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz and the corresponding response frequencies 2686.9375 MHz, 2687.9375 MHz and 2688.9375 MHz may be assigned for operational fixed stations. Such assignments are subject to the condition that all operational fixed stations must comply with the technical standards applicable to stations in the Instructional Television Fixed Service (ITFS) contained in Subpart I of Part 74 of this chapter. All other frequencies in this band are available for assignment only to stations in the Instructional Television Fixed Service. Stations authorized in this band as of July 16, 1971, which do not comply with the above provisions may continue to operate on their presently assigned frequencies. Request for subsequent license renewals or modifications of existing licenses will be considered; however, expansion of systems comprised of such stations will not be permitted.

TABLE V

2650–2656 [1]
2662–2668 [1]
2674–2680 [1]
2686.9375 [2]
2687.9375 [2]
2688.9375 [2]

[1] Available for operational fixed stations employing television transmissions.
[2] Response frequencies; when authorized, they are paired respectively with the bands 2650–2656, 2662–2668 and 2674–2680 MHz, and used in accordance with the technical standards prescribed for ITFS response stations in Part 74, Subpart I, of this chapter.

(g) *6575–6875 MHz*

TABLE VI.—*Paired Frequencies*

Transmit (or receive)	*Receive (or transmit)*
6585.0	6745.0
6595.0	6755.0
6605.0	6765.0
6615.0	6775.0
6625.0	6785.0
6635.0	6795.0
6645.0	6805.0
6655.0	6815.0
6665.0	6825.0
6675.0	6835.0
6685.0	6845.0
6695.0	6855.0
6705.0	6865.0

Unpaired Frequencies[1]

6715.0
6725.0
6735.0

[1] Available for systems employing half-duplex (one-way) transmission.

(h) *12,200–12,700 MHz*

TABLE VII.—*Paired Frequencies*

Transmit (or receive)	*Receive (or transmit)*
12,210	12,470
12,230	12,490
12,250	12,510
12,270	12,530
12,290	12,550
12,310	12,570
12,330	12,590
12,350	12,610
12,370	12,630
12,390	12,650
12,410	12,670
12,430	12,690

Unpaired Frequencies[1]

12,450

[1] Available for systems employing half-duplex (one-way) transmission.

(i) *Bands above 12,700 MHz:* Available for developmental operation with frequency to be specified in authorization.

(j) Licensees holding valid authorizations as of _____, which do not meet the provisions of this section may continue to be authorized.

§ 94.67 Frequency Tolerance.

(a) Stations in this service shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band in MHz:	*Tolerance as percentage of assigned frequency*
952 to 960	0.0005
1850 to 1990	0.002
2130 to 2150	0.001
2150 to 2160	0.001
2180 to 2200	0.001
2450 to 2500	0.001
2500 to 2690	(1)
6575 to 6875	0.005
12,200 to 12,700	0.005
Above 12,700	(2)

[1] In accordance with the technical standards contained in Subpart I, Part 74 of this chapter.
[2] To be specified in authorization.

§ 94.69 Types of Emission.

(a) Subject to the limitations of paragraph (b), stations in this service will be authorized any type of emission, method of modulation, and transmission characteristic, except that:

(1) Type B, damped wave emission will not be authorized

(2) Stations in the 2500–2690 MHz band shall employ emission in accordance with the technical standards contained in Subpart I, Part 74 of this chapter.

(b) The Commission may require an applicant to make appropriate technical changes, should it appear that the proposed method of modulation is unduly

wasteful of emission bandwidth in relation to the information bandwith the applicant proposes to transmit.

§ 94.71 Emission Limitations.

(a) Each authorization issued to a station operating in this service will show, as a prefix to the emission classification, a figure specifying the maximum authorized bandwidth.

(b) The maximum bandwidth (necessary or occupied, whichever is greater) which will be authorized per frequency assigned, is as follows:

Frequency band MHz:	*Maximum authorized bandwidth*
952 to 960 MHz	100 kHz
1850 to 1990 MHz	[1] 10 MHz
2130 to 2150 MHz	800 kHz
2150 to 2160 MHz	[1] 10 MHz
2180 to 2200 MHz	800 kHz
2450 to 2500 MHz	[2] 800 kHz
2650 to 2680 MHz	[3] 6 MHz
2686.9375 to 2688.9375 MHz	[3] 3 kHz
6575 to 6875 MHz	[1] 10 MHz
12,200 to 12,700 MHz	[1] 20 MHz
Above 12,700	([4])

[1] For stations employing television or video transmission and which are not part of a multi-hop tandem system, the maximum bandwidth which will be authorized is 6.0 MHz.
[2] 8.0 MHz on a case-by-case basis.
[3] In accordance with technical standards governing the Instructional Television Fixed Service as contained in Subpart I, Part 74 of this chapter.
[4] To be specified in authorization.

(c) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth, at least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth, at least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth at least 43 plus 10 Log_{10} (mean output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(d) When a spurious emission results and causes harmful interference, the Commission may require appropriate technical changes in equipment to alleviate the interference.

(e) The emission of an unmodulated carrier is prohibited except for test purposes as required for proper station and system maintenance.

§ 94.73 Power Limitations.

On any authorized frequency, the average power delivered to an antenna in this service shall be the minimum amount of power necessary to carry out the communication desired, but in no event shall the average effective radiated power (ERP) as referenced to an isotropic radiator, exceed the values specified below. Further, the output power of a transmitter on any authorized frequency in this service shall not exceed 20 watts (43 dBm).

Frequency band:	*Maximum allowable ERP* [1]
952 to 960 MHz	75 dBm [2]
1850 to 2690 MHz	80 dBm
6575 to 6875 MHz	86 dBm
12,200 to 12,700 MHz	86 dBm
Above 12,700	To be specified in authorizations

[1] Peak envelope power shall not exceed five times the average power.
[2] Except when an omnidirectional transmitting antenna is authorized, the maximum shall be 60 dBm.

§ 94.75 Antenna Limitations.

(a) Except where omnidirectional operational operation is specifically provided for under this part, each station in this service shall employ directional antennas with center of the major lobe of radiation directed toward the receiving station with which it communicates or, if the path employs a passive repeater, to the center of that reflector.

(b) Directional antennas shall meet the performance standards indicated in the following tables:

Antenna Standards

Frequency band	Maximum beamwidth to 3 dB points	Category [1]	Minimum radiation suppression at angle in degrees from center line of main beam, in dB: 5 up to 10	10 up to 15	15 up to 20	20 up to 30	30 up to 175	175 up to 180
952-960 MHz [2]	10 degrees	A	5	10	12	15	20	25
	20 degrees	B	----------	4	6	10	15	20
1850-2690 MHz [3]	5 degrees	A	8	18	22	28	30	45
	8 degrees	B	8	18	22	28	25	36
6575-6875 MHz	1.5 degrees	A	25	30	35	42	43	65
	2.0 degrees	B	23	28	32	35	39	45
12,200-12,700 MHz	1.0 degrees	A	27	30	38	40	46	65
	1.5 degrees	B	25	28	37	39	45	50
Above 12,700 MHz	To be specified in authorization.							

[1] Stations in this service may employ directional antennas meeting the performance standards of Category B, except that antennas meeting the performance standards of Category A must be employed when, at any time, frequency engineering analysis, performed in accordance with § 94.63, determines that frequency interference could result to other licensees.

[2] Except for the frequencies 952.1, 952.2, 953.3, 952.4, 952.5, 952.6, 952.7, 956.4, 956.5, 959.8, 959.9 MHz, where the maximum beamwidth is 360 degrees

[3] Except for 2150–2160 MHz, where the maximum beamwidth is 360 degrees.

(c) Authorizations for stations in this service will specify the use of horizontal, vertical or, in the case of polarization diversity, both vertical and horizontal polarization of the transmitted signal, as appropriate for the system involved. Polarization of other than vertical or horizontal will not be authorized.

(d) New periscope antenna systems will be authorized upon a certification that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section and, at locations where multiple periscope antennas are employed, that the cross-coupling between periscope antennas is suppressed by an amount equal to or greater than the radiation suppression specified in the standards for angles from the main beam of 175–180 degrees for the particular band and antenna category selected.

(e) The provisions of this section shall apply to passive repeaters employed to re-direct or repeat the signal from a station's directional antenna system, but these passive repeaters will be distinguished from periscope antenna systems on the basis that they deflect the radiation of a directional antenna system from horizontal or near horizontal to the horizontal or near horizontal. In such instances, the center lobe of radiation from the directional transmitting antenna shall be directed to the center of the passive repeater; and the major lobe of the re-radiation from the reflector shall be directed toward the center of the receiving antenna with which this station communicates.

(f) Intentional design of systems employing diffraction or scattering modes are specifically prohibited.

§ 94.81 Type Acceptance and Technical Information Filings of Microwave Equipments.

(a) Except for equipment used under a developmental authorization, equipment listed below shall have received either type acceptance by the Commission for use under applicable rules of this subpart or technical information for application reference shall have been submitted to the Commission, as appropriate.

(1) Type acceptance by the Commission is required for all transmitters employed in this Service.

(2) Technical Information for Application Reference shall be filed with the Commission for each receiver in this Service when the output of the receiver is employed directly or indirectly to modulate a transmitter in this Service.

(3) Technical Information for Application Reference shall be filed with the Commission for each antenna employed in this Service.

(b) Requirements for obtaining Type Acceptance by the Commission and in submitting Technical Information for Application Reference to the Commission are contained in Subpart F, Part 2 of this Chapter.

§ 94.83 Transmitter Control Requirements.

Each transmitter shall be so installed and protected that it is not accessible to or capable of operation by persons other than those duly authorized by the licensee.

§ 94.85 Transmitter Measurements.

(a) The licensee of each station shall employ a suitable procedure to determine that the carrier frequency of each transmitter is maintained within the tolerance prescribed in this part. This determination shall be made, and the results thereof entered in the station records, when the transmitter is initially installed and when any change is made in the transmitter which may affect the carrier frequency or the stability thereof.

(b) The licensee of each station shall employ a suitable procedure to determine that the power delivered by the transmitter to the antenna and the maximum effective radiated power (ERP) does not exceed the limitations specified in the microwave station authorization. Such a procedure may consist of measuring the power output of the transmitter, recording the measurements, and determining the power delivered to the antenna and the ERP. This determination shall be made, and the results thereof entered in the station records when the transmitter is initially installed; and when any change is made which would increase the power delivered to the antenna or the ERP.

Subpart D—Station Operating Requirements

§ 94.101 Suspension of Transmissions Required.

The radiation of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the station authorization until such deviation is corrected, except for transmissions concerning the immediate safety of life or property, in which case the transmissions shall be suspended as soon as the emergency is terminated.

§ 94.103 Operator Requirements.

(a) All transmitter adjustments or tests during or coincident with the installation, servicing or maintenance of a radio station, which may affect the proper operation of such station, shall be made by or under the immediate supervision and responsibility of a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, who shall be responsible for the proper functioning of the station equipment.

(b) An unlicensed person, with the consent or authorization of the licensee, may employ stations in this service for the purpose of telecommunications.

(c) The provisions of this section authorizing unlicensed persons to operate stations shall not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain control over the stations licensed to them (including all transmitter units thereof), or for the proper functioning and operation of those stations (including all transmitter units thereof) in accordance with the terms of the licenses of those stations.

(d) Notwithstanding any other provisions of this section, unless the transmitter is so designed that none of the operations necessary to be performed during the course of normal rendition of service may cause off-frequency operation or result in any unauthorized radiation, and unless the transmitter is so installed that all controls which may cause improper operation or radiation are not readily accessible to the person operating the transmitter, such transmitter shall be operated by a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, as may be appropriate for the type of emission being used, issued by the Commission.

(e) Each person required to have an operator's license under this section shall post, or have immediately available at a place he is normally based or on duty, the original of his license, except that when he is performing duty at a station where he is not normally based, he shall have on his person a valid license identification card. (FCC Form 785–F).

§ 94.105 Station Identification.

(a) Stations in this service are exempt from the requirement to identify these transmissions by call sign.

§ 94.107 Posting of Station Authorization and Transmitter Identification Cards, Plates, or Signs.

(a) The original of each transmitter authorization in this service shall be posted or be immediately available at the address named in the authorization.

(b) A clear and legible copy of the current transmitter authorization shall be posted or be immediately available at the transmitter location.

(c) A Transmitter Identification Card (FCC Form 452–C) indicating the transmitter call sign and the licensee's name and address shall be affixed to each transmitter. A plate of metal or other durable substance may be substituted for the Form 452–C provided it contains the required information.

(d) Where a station in this service is normally unattended during its operation, a sign indicating the transmitter call sign, and licensee's name and address shall be affixed to the gate, door, or entrance to the premises housing the transmitter together with the telephone number of the licensee's representative who could make the station available for inspection.

§ 94.109 Inspection of Station and Station Records.

All stations and records of stations in this service shall be made available at any reasonable time for inspection by an authorized representative of the Commission.

§ 94.111 Inspection and Maintenance of Tower Marking and Associated Control Equipment.

The licensee of any radio station which has an antenna structure required to be painted or illuminated pursuant to the provisions of Section 303(q) of the Communications Act of 1934, as amended, and/or Part 17 of this chapter, shall operate and maintain the tower marking and associated control equipment in accordance with the following:

(a) The tower lights shall be observed at least once each 24 hours, either visually or by observing an automatic and properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or, alternatively, there shall be provided and properly maintained an automatic alarm system designed to detect any failure of the tower lights and to provide indication of such failure to the licensee.

(b) Any observed or otherwise known failure of a code or rotating beacon light or top light not corrected within thirty minutes, regardless of the cause of such failure, shall be reported immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration. Further notification by telephone or telegraph shall be given immediately upon resumption of the required illumination.

(c) All automatic or mechanical control devices, indicators, and alarm systems associated with the tower lights shall be inspected at intervals not to exceed three months, to insure that such apparatus is functioning properly.

(d) All lighting shall be exhibited from sunset to sunrise unless otherwise specified in the instrument of station authorization.

(e) A sufficient supply of spare lamps shall be maintained for immediate replacement purposes at all times.

(f) All towers shall be cleaned or repainted as often as is necessary to maintain good visibility.

§ 94.113 Station Records.

Each licensee of a station in this service shall maintain records as required elsewhere in this part and in accordance with the following:

(a) For all stations, the results and dates of the transmitter measurements required by § 94.85 and the name of the person or persons making the measurements.

(b) For all stations, when service or maintenance duties are performed, which may affect their proper operation, the responsible operator shall sign and date an entry in the station record concerned, giving:

(1) Pertinent details of all duties performed by him or under his supervision;

(2) His name and address and the class, serial number, and expiration date of his license, provided that this information, so long as it remains unchanged, is not required to be repeated in the case of a person who is regularly employed as operator on a full-time basis at the station.

(c) When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made as follows:

(1) The time the tower lights are turned on and off each day, if manually controlled.

(2) The time the daily check of proper operation of the tower lights was made.

(3) In the event of any observed or otherwise known failure of a tower light:

(i) Nature of such failure.

(ii) Date and time the failure was observed or otherwise noted.

(iii) Date, time, and nature of the adjustments, repairs, or replacements made.

(iv) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given.

(v) Date and time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(4) Upon completion of the 3-month periodic inspection required by § 94.111(c):

(i) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems.

(ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

(d) The records shall be kept in an orderly manner, and in such detail that the data required are readily available. Key letters or abbreviations may be used if proper meaning or explanation is set forth in the record.

(e) Each entry in the records of each station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.

(f) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry, who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.

(g) Records required by this part shall be retained by the licensee for a period of at least one year.

Subpart E—Developmental Operation

§ 94.151 Eligibility

An authorization for developmental operation in this service may be issued for the purpose of developing a radiocommunication service or technique which offers reasonable promise of substantial contribution to the expansion or extension of the radio art, along lines not already investigated.

§ 94.153 Showing Required.

Each application for developmental operation shall be accompanied by a showing that:

(a) The applicant has an organized plan of development leading to a specific objective;

(b) A point has been reached in the program where actual transmission by radio is essential to the further progress thereof;

(c) The program will be conducted by qualified personnel;

(d) The applicant is legally and financially qualified, and possesses adequate technical facilities for conduct of the program as proposed; and,

(e) The public interest, convenience, or necessity will be served by the proposed operation.

§ 94.155 Limitations on Use.

Stations used for developmental operation shall be constructed and used in such a manner as to conform with all of the technical and operating requirements of Subparts C and D of this part, unless deviation therefrom is specifically provided in the instrument of authorization.

§ 94.157 Frequencies Available for Assignment.

Stations engaged in developmental operation may be authorized to use a frequency, or frequencies, available for the service in which they propose to operate. The number of channels assigned will depend upon the specific requirements of the developmental program itself, and the number of frequencies available in the particular area where the station will be operated.

§ 94.159 Interference.

The operation of any station engaged in developmental work shall be subject to the condition that no harmful interference is caused to the operation of stations licensed on a regular basis under any part of the Commission's rules.

§ 94.161 Special Provisions.

(a) The developmental program as described by the applicant in the application for authorization shall be substantially followed unless the Commission shall otherwise direct.

(b) Where some phases of the developmental program are not covered by the general rules in this chapter and the rules in this part, the Commission may specify supplemental or additional requirements or conditions in each use, and deemed necessary in the public interest, convenience, or necessity.

(c) The Commission may, from time to time, require a station engaged in developmental work to conduct special tests which are reasonable and desirable to the authorized developmental program.

§ 94.163 Required Supplementary Statement.

Every application for authority to engage in developmental operation shall be accompanied by a statement signed by the applicant in which it is agreed that any authorization issued pursuant thereto will be accepted with the express understanding of the applicant that it is subject to change in any of its terms or to cancellation in its entirety at any time, upon reasonable notice but without a hearing, if, in the opinion of the Commission, circumstances should so require.

§ 94.165 Report of Operation.

(a) A report on the results of the developmental program shall be filed with and made a part of each application for renewal of authorization or in cases where no renewal is requested, such report shall be filed within 60 days of the expiration of such authorization. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information, and will not be publicly disclosed without permission of the applicant.

(b) The report shall include comprehensive and detailed information on the following:

(a) The final objective.
(b) Results of operation to date.
(c) Analysis of the results obtained.
(d) Copies of any published reports.
(e) If continued operation is desired, the need therefor.
(f) Number of hours of operation on each frequency.

F.C.C. 73–1149

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
QUALITY TELECASTING CORPORATION, MAYAGUEZ, P.R.
For Approval of Rebroadcast Agreement

NOVEMBER 7, 1973.

ARTHUR SCHEINER, ESQ.,
2021 L Street, N.W.,
Washington, D.C. 20036

DEAR MR. SCHEINER: This refers to your letter of June 18, 1973, on behalf of Quality Telecasting Corporation and its Station WORA–TV, Mayaguez, Puerto Rico. In your letter, you seek Commission acquiescence in an agreement between WORA–TV and one or more stations in Puerto Rico which originate substantial amounts of programming, whereby WORA–TV will rebroadcast programs it receives from such station or stations, the agreement to run for a period of longer than two years and up to 10 years. You recognize that Section 73.658(c) of the Commission's Rules limits "network agreements" to a period of two years; but you assert that an agreement between WORA–TV and another Puerto Rican station (for example, the current agreement between WORA–TV and WRIK–TV, Ponce) should not be considered a network agreement. You claim that this is simply not the type of agreement contemplated and covered by the Commission's network rules, or that, even if it is, the circumstances of television broadcasting in Puerto Rico, generally, and in this situation in particular, are such that the two-year limitation should not apply. If this is not a network agreement but is simply a "rebroadcasting" agreement, of course there is no limitation in the Commission's Rules upon the length of the agreement period.

As to the matter of a general ruling that agreements of this sort are not "network agreements", this request must be denied. We have noted your arguments that no national network programming is involved here (there is virtually no ABC, CBS, or NBC programming in Puerto Rico), and that any WORA–TV agreement, such as that currently in effect with WRIK–TV, is not really with a "network organization" but one with a single station originating programming basically for its own use but also agreeing to permit its carriage on WORA–TV. However, the Communications Act and the Commission's Rules do not by any means limit "chain broadcasting" or "network" matters to those involving national networks. Thus, Section 4(p) of the Act refers to any arrangement involving simultaneous presentation of the same program by two or more stations, and the Commission's Rules refer to "national or regional network organization" (Section 73.658(a)) and "national, regional or other network" (Section 1.613

(a)). Also, the type of arrangement presently in effect between WORA–TV and WRIK–TV, under which the latter in effect sells time on WORA–TV to sponsors interested in Island-wide coverage, appears to be closer to the usual "network" arrangement than to one simply involving the physical fact of reception and re-transmission. Thus, if a general ruling were required, it would have to be that such an agreement is a "network agreement" and, under our rules, limited to two years duration.

However, we recognize that the present Commission rules in this area are not completely satisfactory, leaving some doubt as to whether a number of types of arrangements between stations and other program sources (including other individual stations) are, or properly should be, considered to be "network agreements" or (if they are) should be subject to the same restrictions as are the typical agreements between stations and "national" networks. The Commission hopes to begin shortly a study, and possibly a rule-making proceeding, concerning this subject.

In view of this uncertainty, we are not prepared to give a definitive ruling at this time on the basic question raised, one way or the other. We do believe that, in view of the somewhat unique circumstances involved in Puerto Rican television in general, and the situation of WORA–TV in particular, it is appropriate to give permission for WORA–TV to enter into an agreement for somewhat longer than the two-year term generally applicable to network-affiliate arrangements. These circumstances include the absence of any "national" network programming in this situation, and the fact that the television outlets with which WORA–TV competes (essentially, WOLE–TV, Aguadilla-Mayaguez, and the translator of WKAQ–TV), as well as the only other Puerto Rican operating station which does not originate its programming (WSUR–TV, Ponce) have total or partial common ownership ties with stations which originate programming which they re-broadcast. Under these circumstances, it appears that it would be in the interest of stability and competitive equality to permit WORA–TV to enter into an agreement with another Puerto Rican station, under which it re-broadcasts some of the programs of such other station, for a period of up to five years.

Accordingly, Quality Telecasting Corporation and Station WORA–TV ARE PERMITTED to enter into one arrangement whereby WORA–TV re-broadcasts some of the programs of one other Puerto Rican station, for a period of up to five years. This permission is given subject to two conditions: (1) that any such agreement be filed with the Commission; and (2) that all other provisions of Section 73.658, including matters such as territorial exclusivity, right to reject, and right to susbtitute programs, be complied with. Moreover, this situation will be closely scrutinized to see if any anti-competitive developments appear to result. It is assumed that the additional contract period permitted by this action will not be used in such fashion.

Commissioners Burch, Chairman, Reid and Wiley concurring in the result. Commissioners Johnson and H. Rex Lee dissenting.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

F.C.C. 73-1207

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
TELEPROMPTER OF PORTSMOUTH, INC., PORTSMOUTH, OHIO	CAC-1083 OH100
UNINCORPORATED AREA OF SCIOTO COUNTY, OHIO, CONTIGUOUS TO PORTSMOUTH, OHIO	CAC-1084 OH272
UNINCORPORATED AREA OF GREENUP COUNTY, KY., CONTIGUOUS TO SOUTH SHORE, KY.	CAC-1085 KY148
NEW BOSTON, OHIO	CAC-1086 OH098
SOUTH SHORE, KY.	CAC-1087
For Certificates of Compliance	KY137

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 29, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. TelePrompTer of Portsmouth, Inc., operates cable television systems at the above-captioned communities, all of which are located within the specified zone of the Charleston-Huntington, West Virginia major television market (#36). These systems provide subscribers with the following television broadcast stations:

WSAZ-TV (Ch. 3, NBC), Huntington, West Virginia
WHTN-TV (Ch. 13, ABC), Huntington, West Virginia
WCHS-TV (Ch. 8, CBS), Charleston, West Virginia
WCPO-TV (Ch. 9, CBS), Cincinnati, Ohio
WLWT (Ch. 5, NBC), Cincinnati, Ohio
WTVN-TV (Ch. 6, ABC), Columbus, Ohio
WOSU-TV (Ch. 34, Educ.), Columbus, Ohio
WLWC (Ch. 4, NBC), Columbus, Ohio
WBNS-TV (Ch. 10, CBS), Columbus, Ohio

On August 25, 1972, TelePrompTer filed applications for certificates of compliance to add the signals of the following television broadcast stations:

WXIX-TV (Ch. 19, Ind.), Newport, Kentucky
WUAB (Ch. 43, Ind.), Lorain, Ohio[1]

On August 22, 1973, TelePrompTer amended its applications for South Shore and Greenup County, Kentucky, to request carriage of WKMR (Ch. 38, Educ.), Morehead, Kentucky, on these two systems. All of TelePrompTer's applications are unopposed.

[1] Although TelePrompTer is seeking certification to add both signals, it plans to add only WXIX-TV and a public access channel at the present time. WUAB and an educational access channel will be added when microwave facilities necessary to relay the signal of WUAB are authorized and constructed, and when converters increasing the systems' capacity to 30 channels are installed.

2. WKMR places a predicted Grade B contour over South Shore and over the portions of Greenup County served by TelePrompTer. Carriage of that signal is, accordingly, permissible under Section 76.61 (a) (2) of the Rules. These systems currently are not carrying any independent signals. They may, therefore, pursuant to Section 76.61 (b) (2) (i), Supply signals from three distant independent stations TelePrompTer has elected to request carriage of two distant independent stations, and has selected signals from each of the two closest top-25 markets.[2] Accordingly, TelePrompTer's applications are fully consistent with our signal carriage rules.

3. TelePrompTer commenced operations in these communities in the early 1960's. Upon grant of the above-captioned applications, it will be required to provide one public access channel and one educational access channel for each of the five communities it serves.[3] TelePrompTer recognizes its obligation to initiate access services, but has requested a temporary waiver of Section 76.251(c) to allow it to provide one public access channel and one educational access channel, to be shared by the five communities.

4. In support of its waiver request, TelePrompTer points out that the majority of people living within the area served reside in Portsmouth,[4] and that most members of minority groups in the conglomerate coverage area live in that city.[5] It is alleged that, because of this concentration of population, the smaller outlying communities would be unable to make full use of separate access facilities. TelePrompTer asserts, further, that the outlying communities served have "a political, social, and economic community of interest" with Portsmouth.[6] Finally, it is argued that, because these systems were built in the early 1960's as one integrated system, it would be technically and econom-

[2] Cleveland-Lorain-Akron, Ohio (#8), and Cincinnati, Ohio-Newport, Kentucky (#17).

[3] Section 76.251(c) provides, in part, that if existing systems receive certificates of compliance to add television signals before March 31, 1977, pursuant to Section 76.61 (b) or (c), ". . . for each such signal added, such systems shall provide one (1) access channel in the following order of priority—(1) public access, (2) education access, (3) local government access, and (4) leased access . . ."

[4] Populations and numbers of cable subscribers in the individual communities are as follows:

Area	Population	Subscribers (as of Dec. 31, 1972)
Portsmouth	27,633	7,260
Scioto County	12,000	2,187
New Boston	3,325	924
South Shore	676	296
Greenup County	2,100	294
Total	45,734	10,961

The population figures listed for Portsmouth, New Boston and South Shore are those reported for the 1970 census. The figures listed for Scioto and Greenup Counties were supplied by TelePrompTer as estimates of those portions of the counties served by the cable systems.

[5] 1970 Census figures indicate that minority groups represent 4.8% of the population in Portsmouth, 1.8% of the population in Scioto County, 0.1% of the population in New Boston, and 0.3% of the population in Greenup County (including South Shore).

[6] Distances involved in this case are not great. New Boston, for example, is approximately 3 miles from Portsmouth and South Shore is approximately 2½ miles from that city.

ically unfeasible at the present time to construct the facilities necessary to supply a total of ten access channels for these communities.[7]

5. In adopting our access cablecasting rules for systems in major markets, we recognized that they might pose some problems for existing systems operating in smaller communities within these markets.[8] We particularly noted the hardships that would be incurred if existing conglomerate systems, serving separate communities from a common headend, were required at this time to undergo radical redesigning and rebuilding in order to provide separate access facilities for each community. Accordingly, we have granted temporary waivers of Section 76.251(c) upon detailed showings that it would be technically and economically unfeasible to construct separate access facilities at this time, and that individuals living in the communities served would not, to any significant extent, be deprived of access services they would receive if separate facilities were provided. *Gerity Broadcasting Company*, FCC 73–281 40 FCC 2d 58 *Cable TV Company of York*, FCC 73–459, 40 FCC 2d 927, *Montachusett Cable Television, Inc.*, FCC 73–1057, —— FCC 2d ——. Consonant with these precedents, we believe that TelePrompTer has adequately demonstrated the need for a temporary waiver of Section 76.251(c).

In view of the foregoing, we find that a grant of the above-captioned applications would be consistent with the public interest.

Accordingly, IT IS ORDERED, That TelePrompTer of Portsmouth's requests for temporary waiver of Section 76.251 ARE GRANTED.

IT IS FURTHER ORDERED, That the above-captioned applications, (CAC–1083 through 1087), filed by TelePrompTer of Portsmouth, Inc., ARE GRANTED, and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[7] Unlike other systems that have been granted waivers similar to the one requested here, these systems are currently served by two headends. One, located in Portsmouth, serves most of that city, New Boston, South Shore, portions of Greenup County and western portions of Scioto County. The other, located in eastern Scioto County, serves that portion of the county and portions of the city of Portsmouth. TelePrompTer has filed an application for a new LDS station in the Cable Television Relay Service (CPCLD–117). Upon grant of that application, the headend in eastern Scioto County will be eliminated and all communities will be served by a single LDS headend located in Portsmouth.

[8] Para. 147, *Cable Television Report and Order*, 36 FCC 2d 143, 197 (1972); Para. 90, *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 359 (1972).

F.C.C. 73-1185

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
U.S. DEPARTMENT OF JUSTICE
For Extension of Time to Protest Renewal of License

NOVEMBER 14, 1973.

Certified Mail—Return Receipt Requested

HON. THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division,
U.S. Department of Justice,
Washington, D.C. 20530

DEAR MR. KAUPER: This is in reference to your letter of November 1, 1973, on behalf of the United States Department of Justice whereby you request that the time for formally protesting the license renewals of radio and television Stations WTMJ, Milwaukee, Wisconsin, be extended to and including December 1, 1973. WTMJ, Inc., the licensee of radio and television Stations WTMJ, has objected to the requested extension of time.

Section 1.580(i) of the Commission's rules provides, in substance, that a petition to deny a license renewal application must be filed on or before the first day of the last full month of the station's license term. The licenses for radio and television Stations WTMJ expire on December 1, 1973. Accordingly, a timely petition to deny was due on November 1, 1973, the date you filed your letter with the Commission. Absent good cause shown, the Commission will not grant a waiver of Rule 1.580(i) to authorize the filing of a petition to deny after that date. See, *e.g.*, *WSM, Incorporated*, 24 FCC 2d 561 (1970) and *Trumbull County N.A.A.C.P.*, 25 FCC 2d 827 (1970).

In support of your request you submit that the additional time is necessary so that the Department of Justice may determine the appropriateness of participating "in this or a similar license renewal proceeding that may, by reason of multimedia ownership, be thought to raise substantial problems of concentration and competition under Section 309 of the Communications Act." You further contend that the instant situation is especially important since Milwaukee is the second largest market in the United States wherein the only metropolitan morning and evening newspapers are owned in common with an AM–FM–TV station combination. Therefore, you urge the Commission to extend the time for filing a petition to deny until December 1, 1973.

The Commission agrees with WTMJ, Inc. that sufficient reasons justifying the requested extension of time have not been presented. To the extent that interested persons wish to avail themselves of our formal processes, they must either comply with the Commission's rules

governing their usage or establish a reasonable predicate for a waiver thereof. There has been no attempt to explain your inability to tender your protest within the prescribed period following the publication and timely filing of the WTMJ applications.[1] Moreover, according to WTMJ, Inc., the ownership of the WTMJ stations and the control of Milwaukee's morning and evening newspapers by The Journal Company, the licensee's parent corporation, has existed for many years and was first brought to the attention of the Antitrust Division of the Department of Justice as early as 1962. In this regard, it should again be pointed out that your letter was submitted to the Commission on the cutoff date for filing formal petitions to deny license renewal applications for broadcast stations located in the State of Wisconsin. We have repeatedly stated that such last-minute requests, made without adequate supporting basis, will be denied. See *Colorado Broadcast Stations*, 28 FCC 2d 375 (1971) and 29 FCC 2d 11 (1971).

Accordingly, in view of the foregoing, we must deny your request. Nevertheless, as you are undoubtedly aware, any information relevant to any application pending before the Commission will be considered on an informal basis; provided, of course, such information is submitted prior to action on the application.

Commissioner Johnson concurring in the result. Commissioner Hooks concurring and issuing a statement.

By Direction of the Commission,
Vincent Mullins, *Secretary.*

Concurring Statement of Benjamin L. Hooks

I concur in the Commission's denial of a 30-day extension of time grant requested by the Department of Justice in which to file a Petition to Deny against the licensee herein.

I do so, in part, because the Commission has more often than not rejected extension of time requests and, in one case, I vigorously dissented to the turn-down of a request by a citizen's group for an identical 30-day extension. See *Southern Media Coalition*, 41 F.C.C. 2d 928 (1973). I would have been sorely distressed if the Department of Justice had received preferential treatment here because, as distinguished from the citizen's group in *Southern*, supra, the Department has been studying the media concentration for years, has been aware of the particular situation at issue for some time, is the world's largest law firm and located a few scant blocks away from our offices, and hasn't offered a scintilla of a showing as to why its Petition could not have been timely filed. Under those circumstances, acquiescence in the Department's request would have been clearly arbitrary and discriminatory in contrast to those parties whose requests, over the years, have been declined.

That is not to say that the Commission should be immune from requests for extensions of time in which to file Petitions to Deny where the requisite good cause showing is offered.

[1] Within the required 45-day period preceding the filing of their license renewal applications, Stations WTMJ through local broadcast and newspaper announcements publicized the forthcoming submission of their applications and the fact that interested persons seeking to comment with respect to the operations of the WTMJ stations should so apprise the Commission no later than November 1, 1973. On August 31, 1973, the WTMJ license renewal applications were timely filed with the Commission.

F.C.C. 73–1031

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

INTERIM POLICY FOR FM FACILITIES FOR AREA AFFECTED BY U.S.-MEXICO FM BROADCAST AGREEMENT	

OCTOBER 4, 1973.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), JOHNSON, H. REX LEE, REID, WILEY AND HOOKS, ISSUED THE FOLLOWING PUBLIC NOTICE:

INTERIM POLICY FOR FM FACILITIES FOR AREA AFFECTED BY U.S.-MEXICO FM BROADCASTING AGREEMENT

On August 9, 1973, by action taken in accordance therewith, the U.S.-Mexico FM Broadcasting Agreement went into force and effect. As stated in Public Notice No. 05769, the Agreement concerns the allotment and use of FM broadcast channels within 199 miles (320 kilometers) of the common border between the two countries.

By an Order adopted today, the first step in effectuating the Agreement is being taken. The Order amends the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) for Arizona, California, New Mexico, and Texas to reflect the channel allotments agreed to for the border zone. Because the Agreement also covers noncommercial educational FM channel allotments (201–220) and assignments, Section 73.507 is being added to set forth the Class A, B, and C noncommercial educational FM channels assigned to communities in the border zone of these four states. The Agreement also includes seven Class D allotments for existing stations in California, but these are not included in Section 73.507.

Other rules must be amended to align them with various terms of the Agreement. For example, the procedure outlined in Note 1 to Section 1.573 has to be revised, since quite clearly anyone seeking an educational noncommercial facility in the border zone except Class D must either apply for a channel assignment in Section 73.507 or, if there is no assignment at the community of choice, first go through rule making (see Subpart C of Part 1 of the Commission's Rules and Regulations) subject to the notification procedure in accordance with provisions of the Agreement. Our rules also should be amended to incorporate the mileage separations for Class D channels where applicable.

In the circumstances, it is appropriate to hold in abeyance action with respect to applications for noncommercial educational stations as well as petitions for rule making for noncommercial educational assignments in the border zone. More specifically, any such application

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or petition for rule making not already accepted for filing will *not* be accepted (although one may be tendered) pending determination of what change is to be made to Note 1 to Section 1.573 and other related rules and regulations substantively. Nor will the Commission take any action with respect to any such application or petition for rule making until appropriate rule changes have been made.

It is anticipated that action will be completed (or initiated, if a Notice of Proposed Rule Making is deemed necessary) no later than December 31, 1973.

F.C.C. 73-1209

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of a Joint Request by VIDEO SERVICE CO. A Miscellaneous Microwave Common Carrier LOGANSPORT TV CABLE CO., LOGANSPORT, IND. (IN029) GREATER LAFAYETTE TV CABLE CO., LAFAYETTE, IND. (IN022) MARION CABLE TV, INC., MARION, IND. (IN032), GAS CITY, IND. (IN030), JONESBORO, IND. (IN031), GRANT COUNTY, IND. (IN107) TELECABLE OF KOKOMO, INC., KOKOMO, IND. (IN045) HOOSIER TELECABLE, WABASH, IND. (IN004), PERU, IND. (IN003), GRISSOM AFB, IND. (IN070) AND In the Matter of an Informal Request by CABLE TELEVISION CO. OF ILLINOIS, GIBSON CITY, ILL. (IL154) For Declaratory Ruling	CSR-315(R)

MEMORANDUM OPINION AND ORDER

(Adopted November 21, 1973; Released November 29, 1973)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. In *Video Service Company, et al.*, FCC 73-376, 40 FCC 2d 480, the Commission granted special relief to the above-captioned parties, in the form of a special temporary authorization to substitute carriage of Station WSNS-TV (Indep.) Chicago, Illinois, for Station WFLD-TV (Indep.) Chicago, Illinois, when WSNS-TV was broadcasting Chicago White Sox baseball games during the 1973 baseball season. The authorization was expressly conditioned on the filing of applications for certification for full carriage of WSNS-TV no later than 60 days from the release date of the order (April 10, 1973). Midwest Television, Inc., licensee of Television Broadcast Station WCIA, Champaign, Illinois, filed a "Petition for Reconsideration" of the decision insofar as it authorized Cable Television Company of Illinois (CTC) to carry the White Sox games on WSNS-TV on its Gibson City, Illinois, system. In addition, a petition for partial reconsideration was filed by McGraw-Hill Broadcasting Company, Inc., requesting expeditious consideration of the applications for certification sub-

mitted by the affected cable television systems. McGraw-Hill, licensee of Television Broadcast Station WRTV, Indianapolis, Indiana, requested modification of the decision to the extent that WSNS–TV should be carried on a full time basis if the applications are granted but should not be carried at all if the applications are denied. Hoosier Telecable, operator of cable television systems at Wabash, Peru, and Grissom AFB, Indiana, filed a response to the McGraw-Hill petition and CTC opposed the Midwest Television petition.

2. Midwest Television's request for reconsideration is based on two contentions. First, it is claimed that CTC failed to comply with the procedural requirements of Section 76.7 of the Commission's Rules.[1] Although the CTC informal request was made in the form of letters to the Commission on January 19, 1973, and January 22, 1973, no copy of either letter was sent to Midwest Television. Therefore, Midwest Television was not notified of CTC's request until the Commission's decision in *Video Service Company, et al., supra*, was released. Since Gibson City, Illinois, is located within the specified zone of Champaign, Illinois, and the predicted Grade A contour of WCIA, Midwest Television claims that it was a party in interest to this matter and should have had an opportunity to comment. Second, Midwest Television argues that the Commission's rationale for a grant of special temporary authorization is inapplicable to the situation in Gibson City, Illinois. Unlike CTC, the remaining captioned cable systems had been in operation for many years, and their subscribers' viewing habits were firmly entrenched. Although CTC asserted that it was authorized to carry WFLD–TV in 1968, the system did not become operational until 1972, and at the time its request was filed, only 480 subscribers were served by the system. Midwest Television concludes that CTC must have had substantially fewer subscribers during the 1972 baseball season and that one season's viewing is insufficient to establish the viewer habits the Commission found to exist in the Indiana systems. CTC opposes the Midwest Television petition stating, first, that Midwest Television did not and cannot claim prejudice as a result of being uninformed of the original CTC request. The Midwest Television response would not be different from the oppositions it "undoubtedly filed" in opposition to the other requests to carry WSNS–TV. Second, CTC claims, it is irrational to suggest that the Commission would discriminate against CTC while granting the same authority to the other cable operators confronted with similar circumstances. Moreover, denial of the temporary authorization would be only for the remainder of the 1973 baseball season, since the carriage of WSNS–TV is consistent with the Commission's Rules. Also, CTC states that it has complied with the Commission's order by filing an application for permanent carriage of WSNS–TV.

3. The McGraw-Hill request for modification of the Commission decision is based on the allegation that the captioned parties had ample time to seek permanent Commission authorization for carriage of WSNS–TV prior to the commencement of the 1973 baseball season.

[1] Section 76.7 provides, in pertinent part, that:
"(b) The petition may be submitted informally, by letter, but shall be accompanied by an affidavit of service on any cable television system, station licensee, permittee, applicant, or other interested person who may be directly affected if the relief requested in the petition should be granted.

On October 15, 1972, an announcement of the agreement for carriage of the 1973 White Sox baseball games on WSNS–TV was made. The request for a declaratory ruling was not filed until January 26, 1973, and the baseball season did not commence until April 6, 1973, thereby allowing sufficient time to acquire permanent certification. McGraw-Hill claims that efforts to circumvent the Commission's certification rules should not be the basis for even temporary authorization of "cherry-picking." Hoosier Telecable agrees with McGraw-Hill that the subject cable systems be required to switch to full time carriage of WSNS–TV in the event WSNS–TV is certified by the Commission. It is explained by Hoosier Telecable that the systems have complied with the condition of the Commission decision by filing applications for certificates of compliance for WSNS–TV on May 17, 1973. However, if final action on the applications is delayed into a subsequent baseball season, Hoosier Telecable submits that the special temporary authorization should remain in effect until a final decision is reached.

4. In *Video Service Company, et al., supra*, we stated that "this temporary authorization is limited to the duration of the 1973 baseball season, and we will not grant similar temporary relief for any future season." Since the 1973 baseball season is concluded, the authorization no longer has any operative effect. Therefore, to the extent that the petitions for reconsideration are concerned with temporary carriage of WSNS–TV without certification from the Commission, they will be dismissed as moot. Also, the subject cable systems have met the express conditions of the Commission authorization by filing applications for certificates of compliance on May 17, 1973 and June 7, 1973. These applications remain pending, but it is anticipated that they will be processed before the 1974 baseball season.[2] To the extent these petitions for reconsideration are not moot, they must therefore be denied.

In view of the foregoing, the Commission finds that reconsideration of its action in *Video Service Company, et al.*, FCC 73–376, 40 FCC 2d 480, would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Reconsideration," filed by Midwest Television, Inc., and the "Petition for Partial Reconsideration of McGraw-Hill Broadcasting Company, Inc.," filed by McGraw-Hill Broadcasting Company, Inc., ARE DISMISSED as moot to the extent indicated in Paragraph 4, and otherwise ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[2] The following applications for certification have been filed: CAC–2552, 2568–2569, by Hoosier Telecable; CAC–2559, by Logansport TV Cable Company; CAC–2560, 2562–2563, by Marion Cable Television, Inc.; CAC–2564, by Greater Lafayette TV Cable Company, Inc.; CAC–2566, by Telecable of Kokomo Inc.; and CAC–2674, by Cable Television Company of Illinois.

F.C.C. 73-1236

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WALTON BROADCASTING CO., MONROE, GA. For Renewal of License of Station WMRE	Docket No. 19011 File No. BR-2938

APPEARANCES

Thomas W. Fletcher (Cole, Zylstra and Raywid) on behalf of Walton Broadcasting Company and Henry P. Austin, Jr., receiver; and *Thomas B. Fitzpatrick* and *Charles W. Kelley*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted November 28, 1973; Released December 4, 1973)

BY THE COMMISSION:

1. By our Memorandum Opinion and Order, F.C.C. 70-1027, released October 2, 1970, we designated the above-captioned renewal application for hearing on the following issues:

1. To determine the facts and circumstances relating to the filing of the application of Carmichael Radio-TV Industries for a standard broadcast facility in Conyers, Georgia, with particular reference to the participation of Walton Broadcasting Company and any of its principals and whether said application was filed for the principal or incidental purpose of delaying or obstructing the application of Community Broadcasting Company for a standard broadcast facility in Monroe, Georgia.

2. To determine the facts and circumstances surrounding the execution and performance of a contract of sale dated June 11, 1956, wherein Clarice Prichard (presently Mrs. Graham Buchanan) agreed to sell her 50% interest in Walton Broadcasting Company to Warren Gilpin with particular reference to whether an unauthorized transfer of control of Station WMRE has taken place in violation of Section 310(b) of the Communications Act.

3. To determine whether false and misleading information regarding the ownership and control of Walton Broadcasting Company has been submitted to the Commission.

4. To determine whether Walton Broadcasting Company has violated Section 1.613(b) of the Commission's Rules in failing to file copies of contracts relating to ownership and control.

5. To determine whether Walton Broadcasting Company has violated Section 1.615 (a)(1)(i), (a)(1)(iv), (a)(4)(i), and (c) of the Commission's Rules in its submission of Ownership Reports (Form 323).

6. To determine in light of the evidence adduced under the foregoing issues, whether a grant of the above-captioned application would serve the public interest, convenience and necessity.

2. In an Initial Decision, FCC 73D-50, released August 30, 1973, Administrative Law Judge David I. Kraushaar resolved all issues

adversely to the renewal applicant.[1] On the basis of the evidence of record, the Administrative Law Judge (ALJ) concluded that by reason of the misconduct of its president and stockholder, Warren G. Gilpin, Walton Broadcasting Company (hereinafter referred to as WMRE) does not possess the character qualification required of Commission licensees, that there were no redeeming or extenuating circumstances which would justify anything but the severest of sanctions and that the renewal application must be denied in the public interest. Exceptions and a brief in support thereof, together with a request for oral argument, were filed on behalf of WMRE on October 1, 1973. The Broadcast Bureau filed a responsive pleading on October 16, 1973. In our view, no useful purpose would be served by hearing oral argument and WMRE's request will be denied. Attached hereto as an Appendix are our rulings on the exceptions filed in this proceeding.

3. This case has been before the Commission for consideration on three prior occasions in connection with requests by WMRE for special relief without regard to the matters raised by the designated issues. See 28 FCC 2d 111, released March 22, 1971; 38 FCC 2d 207, released November 27, 1972, and 39 FCC 2d 1074, released March 13, 1973. On each occasion the request for special relief was denied on the ground that no such appealing circumstances or public interest considerations were present which would warrant favorable action, and we adhere to the views therein expressed. The disposition of this adjudicatory proceeding must be made in the light of the evidence adduced pursuant to the designated issues.

4. We have given careful consideration to WMRE's contentions that the ALJ erred in his factual determinations and in his resolution of the designated issues. However, we find these contentions to be without merit. The Initial Decision contains a detailed and accurate discussion of the pertinent and material facts with respect to each of the designated issues. The ALJ's findings and conclusions are supported by substantial and probative evidence and they are correct in every material respect. Nor is any change warranted in the ultimate disposition recommended by the ALJ. In view of the serious misconduct established by this record, we conclude, in agreement with the ALJ, that denial of the WMRE license renewal application is required in the public interest; and the Initial Decision must be affirmed.

5. Accordingly, IT IS ORDERED, That the request of Henry P. Austin, Jr., receiver of the corporate assets of Walton Broadcasting Company, for oral argument IS DENIED;

6. IT IS FURTHER ORDERED, That the application for renewal of station license of standard broadcast station WMRE at Monroe, Georgia, IS DENIED; and

7. IT IS FURTHER ORDERED, That the operation of station WMRE at Monroe, Georgia, by Walton Broadcasting Company or by Henry P. Austin, Jr., receiver, SHALL TERMINATE at midnight 180 days from the date of release of this decision; or at midnight of

[1] On October 2, 1971, the Walton County Superior Court appointed Henry P. Austin, Jr. as the permanent receiver of the corporate assets of Walton Broadcasting Company. An involuntary assignment of the license of WMRE from Walton Broadcasting to Mr. Austin was granted by the Commission on October 26, 1971, and Mr. Austin has continued with the prosecution of the renewal application.

the day preceding the date when any other party authorized by the Commission to operate a standard broadcast station on 1490 kHz at Monroe, Georgia, is prepared to commence operation, whichever is sooner.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

RULINGS ON EXCEPTIONS OF HENRY P. AUSTIN, JR., RECEIVER OF WALTON BROADCASTING COMPANY

Exception Nos.	*Rulings*
1, 4, 6, 7, 9, 12, 14, 16.	*Denied.* The findings in the Initial Decision are supported by substantial and probative evidence of record.
2	*Denied.* The Initial Decision sets forth the material and relevant facts concerning the availability of 1580 kHz in Conyers.
3, 5, 8	*Denied.* The findings in the Initial Decision accurately reflect the record. The additional findings requested are not of decisional significance in the context of this case.
10, 11, 13, 17	*Denied.* The additional findings requested are not of decisional significance in the context of this case.
15	*Denied.* Even assuming that the additional findings requested have evidentiary support, they would not affect the outcome of this proceeding and consequently are not of decisional significance. The difficulties to which reference is made in the Exception neither explain nor justify Gilpin's misconduct. Neither do they constitute mitigating circumstances which justify the grant of special relief or which would warrant the imposition of a lesser sanction than denial of renewal. The public interest clearly requires a denial of renewal in this case.
18	*Denied.* The summary of the findings in paragraph 61 of the Initial Decision are based on the prior discussion of specific evidentiary findings which are supported by substantial and probative evidence and which accurately reflect the record.
19–23	*Denied.* The ALJ's conclusions and his ultimate determination that denial of renewal is required in the public interest are based on the substantial and probative evidence of record and are manifestly correct.

F.C.C. 73D–50

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WALTON BROADCASTING CO., MONROE, GA. For Renewal of License of Station WMRE	Docket No. 19011 File No. BR–2938

APPEARANCES

On behalf of the applicant, Walton Broadcasting Company (WMRE) and Henry P. Austin, Jr., receiver, Messrs. *George R. Borsari, Jr.*, *Leonard S. Joyce* and, subsequently, *Thomas W. Fletcher* (of Cole, Zylstra and Raywid); on behalf of Community Broadcasting Company, intervenor, Messrs. *Samuel Miller*, *Mark E. Fields* and *Stephen A. Gold* (Miller & Fields); on behalf of John A. Moffet, a witness, Mr. *Donald E. Ward* (Fly, Shuebruk, Blume & Gaguine); and on behalf of the Chief of the Broadcast Bureau, Federal Communications Commission, Mr. *Charles W. Kelley*.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE DAVID I. KRAUSHAAR

(Issued August 27, 1973; Released August 30, 1973)

PRELIMINARY STATEMENT

1. By Memorandum Opinion and Order released October 2, 1970 (FCC 70–1027), the Commission designated the application of Walton Broadcasting Company (Walton) for renewal of license for standard broadcast station WMRE in Monroe, Georgia, for hearing in the present proceeding. Community Broadcasting Company (Community) was named as a party. With regard to issues numbered 1 through 5, *infra*, the burden of proceeding with the introduction of evidence was placed upon Community (the Broadcast Bureau to introduce any evidence it may have), while the burden of proof under all issues devolved upon Walton. The issues as framed by the Commission are:

"1. To determine the facts and circumstances relative to the filing of the application of Carmichael Radio-TV Industries for a standard broadcast facility in Conyers, Georgia, with particular reference to the participation of Walton Broadcasting Company and any of its principals and whether said application was filed for the principal or incidental purpose of delaying or obstructing the application of Community Broadcasting for a standard broadcast facility in Monroe, Georgia.

"2. To determine the facts and circumstances surrounding the execution and performance of a contract of sale dated June 11, 1956, wherein Clarice Prichard (presently Mrs. Graham Buchanan) agreed to sell her 50% interest in Walton Broadcasting Company to Warren Gilpin with particular reference to whether an unauthorized transfer of control of station WMRE has taken place in violation of Section 310(b) of the Communications Act.

"3. To determine whether false and misleading information regarding the

ownership and control of Walton Broadcasting Company has been submitted to the Commission.

"4. To determine whether Walton Broadcasting Company has violated Section 1.613(b) of the Commission's Rules in failing to file copies of contracts relating to ownership and control.

"5. To determine whether Walton Broadcasting Company has violated Section 1.615(a)(1)(i), (a)(1)(iv), (a)(4)(i), and (c) of the Commission's Rules in the submission of Ownership Reports (Form 323).

"6. To determine in light of the evidence adduced under the foregoing issues, whether a grant of the above-captioned application would serve the public interest, convenience and necessity."

2. Subsequent to the release of the order initiating this proceeding, *supra*, the Commission ruled upon a petition filed by Walton on November 27, 1970 for reconsideration and grant of the renewal of license application without hearing. By Memorandum Opinion and Order released March 22, 1971 (28 FCC 2d 111), it denied that petition.

3. On October 2, 1971, Mr. Henry P. Austin, Jr., on the petition of the National Bank of Monroe, was appointed by the Walton County Superior Court as the permanent receiver of the corporate assets of Walton and of the individual assets of Warren G. Gilpin. On October 26, 1971, the Commission granted the involuntary assignment of the license of Station WMRE from Walton to Austin. On August 2, 1972, Mr. Austin filed a Petition for Extraordinary Relief requesting the termination of the license renewal hearing by the Commission; a grant without further hearing of the license renewal application; and the Commission's approval of the assignment of the license for Station WMRE from Mr. Austin to three Monroe, Georgia, residents. By Memorandum Opinion and Order, 38 FCC 2d 207, released November 27, 1972, however, the Commission denied Austin's Petition for Extraordinary Relief. On December 29, 1972, Mr. Austin filed a petition for reconsideration by the Commission of its denial of his petition for extraordinary relief. Such Petition for Reconsideration was denied by the Commission in a Memorandum Opinion and Order, 39 FCC 2d 1074, released March 13, 1973.

4. The first prehearing conference herein was held on December 10, 1970. Further conferences and hearing sessions were held in both Washington, D.C. and Monroe, Georgia on April 8, 1971, June 23, 1971, June 24, 1971, June 25, 1971, June 28, 1971, June 20, 1972, March 28, 1973, and on April 19, 1973. The record was duly closed on April 19, 1973. Proposed findings of fact and conclusions of law were filed on May 29, 1973 by Community and on May 30, 1973 by Walton (Austin, as Receiver) and the Commission's staff (Broadcast Bureau). Reply briefs were filed on June 8, 1973 by the Broadcast Bureau and on June 11, 1973 by Walton (Austin, as Receiver).

5. The Administrative Law Judge who presided throughout this proceeding, Isadore A. Honig, retired from federal service at the end of June 1973 and, by Order released July 6, 1973 (FCC 73M-791), Administrative Law Judge David I. Kraushaar was assigned herein to prepare the Initial Decision.[1] It does not appear, from careful re-

[1] It appears that counsel for all parties consented to the reassignment of this matter from Judge Honig to another Administrative Law Judge for the purpose of preparing an Initial Decision. See Order released July 6, 1973, *supra* (FCC 73M-791). In any event, no objections of record have been submitted.

view of the written record, that an appropriate determination of the issues depends, in any significant sense, upon the observation of the demeanor of witnesses by the substitute Presiding Judge, or that there are unanswered questions in the latter's mind that call for further hearing sessions and the recall of witnesses.

FINDINGS OF FACT

Issue 1

6. Community Broadcasting Company (Community) applied for a construction permit for a new AM station to be operated on the frequency 1580 kHz and to be located in Monroe, Georgia. The application was submitted on March 25, 1968 (File No. BP–18123). Carmichael Radio-TV Industries, Inc., the alleged "strike" applicant herein, applied for a construction permit for a new standard broadcast station on the same frequency, to be located in Conyers, Georgia. This application was submitted, approximately nine months later, on December 9, 1968 (File No. BP–18412). The two proposals were mutually exclusive.

7. Community is a partnership. Mr. Frank Deral Morris is its President, co-owner and managing partner. Warren G. Gilpin is the President of Walton Broadcasting Co. (Walton), the licensee of AM Station WMRE, Monroe, Georgia. Mr. Clifford Carmichael Lowery was the President of Carmichael Radio-TV Industries, Inc.

8. Mr. Morris worked at Station WMRE from January 1954 until January 8, 1968. He started out as an announcer-salesman and later became station manager and the Secretary-Treasurer of Walton. His contract with Walton called for 12 months' notice before resigning. Mr. Morris gave that notice in October 1967. He was discharged by Mr. Gilpin on January 8, 1968, after Gilpin learned that Morris had been making a frequency survey looking toward the establishment of a competing station in Monroe.

9. Mr. Elbert Wilbert John Johnson was employed at Station WMRE in December 1967 as Mr. Morris' replacement. Within a month he was appointed a vice president of Walton. In February of 1968 he became aware that Mr. Morris had filed, or was about to file, an application for a construction permit for a new radio station in Monroe, Georgia. In February 1968, Mr. Gilpin told Johnson that he (Gilpin) was opposed to Morris' application. Messrs. Johnson and Gilpin, indeed, discussed various methods of "blocking" the Morris application. Johnson suggested that a statement by Mr. Gilpin to the Commission to the effect that Monroe and Walton County were not big enough for two stations would suffice. However, Mr. Gilpin, Johnson testified, wanted some "more impressive or concrete action taken". In fact, Gilpin told Johnson that he would like to have someone file a competing application for Monroe on the same frequency. Johnson suggested to Gilpin that Conyers, Georgia, would be preferable and would serve the same purpose. Gilpin countered that suggestion with a proposal that Athens, Georgia, might be a likely location. Mr. Gilpin told Johnson that he (Gilpin) would furnish the money needed to finance a competing application for a proposed new station in another community.

10. Mr. Johnson, at Gilpin's request, conducted a preliminary examination of Conyers, Georgia, to determine the feasibility of locating a radio station there. Johnson referred to Standard Rate and Data for information as to retail sales in Rockdale County, within which Conyers is located. He drove around the county, analyzing the types of businesses from the standpoint of advertising potential. This economic survey, which he conducted in February/March 1968, caused Mr. Johnson to report to Mr. Gilpin that it was economically feasible to locate a radio station in Conyers.

11. In addition to an economic analysis of Conyers, Georgia, Mr. Johnson, again at the request of Mr. Gilpin, placed a telephone call to a firm of consulting radio engineers in Washington, D.C. that had been retained previously by Gilpin to ascertain whether the frequency 1580 kHz would "work" in Conyers, Georgia. Johnson's testimony regarding this telephone call is corroborated by testimony of Mr. John A. Moffet of the engineering firm of Silliman, Moffet and Kowalski. It appears that Johnson was informed, tentatively, that the frequency 1580 kHz would "work" in Conyers, Georgia from an engineering viewpoint. Subsequently, the Washington firm submitted a written confirmation to Mr. Gilpin of the availability of that frequency in Conyers.

12. Mr. Clifford Lowery, who had worked at Station WMRE while in high school and college, returned to the station during March 1968 and was given the title "News Director". Mr. Lowery joined in conversations with Messrs. Gilpin and Johnson concerning the Morris application. There were possibly a dozen such conversations between March and July 15, 1968, the date on which Johnson's employment at Station WMRE was terminated. In these discussions, according to Johnson's testimony, Gilpin indicated he would use any and all means to block Mr. Morris' application. Mr. Gilpin told Johnson and Lowery, indeed, that he would file whatever he could in the name of Walton and, in addition, foster, support or initiate such other blocking applications as he could. Further, Gilpin had stated that he would encourage anyone—including Johnson and Lowery—to file an application specifying the frequency 1580 kHz either in Conyers or in Athens, Georgia. And Gilpin's encouragement would include financial support.

13. As for his own plans, Mr. Johnson's testimony indicates that these did not include reliance on Gilpin for financial support, however. He never asked Gilpin for money and did not really believe that Gilpin would come across with money, without obligation, as Gilpin had indicated he would. Johnson realized that should he ask Gilpin for money and receive it, it would be unethical or illegal. But Johnson had hoped to interest the owners of an Atlanta radio station, which was not doing well, to relocate in Conyers. Johnson testified that, in suggesting Conyers as a location, he was pointing out to Mr. Gilpin a site which, in his opinion, would offer a financial return and, at the same time, serve Gilpin's announced purpose of denying to Morris the opportunity of obtaining a second radio station in Monroe. Mr. Gilpin, for his part, suggested to Johnson that he and Mr. Lowery establish their own legal and banking connections in Conyers, looking toward the filing of an application.

14. Mr. Lowery, *supra*, corroborated Johnson's testimony that he, Johnson and Gilpin had discussed Morris' application frequently. Gilpin had been interested in keeping Mr. Morris out of Monroe through the filing of a competing application. Lowery testified that he (Lowery) had his own plan. While in college he had done a study of Conyers. (Johnson's study also had indicated that Conyers would be a good place to locate a radio station.) Gilpin encouraged the filing of such an application. In fact, Gilpin had offered Lowery money to file and prosecute a Conyers application. On March 20, 1968, Mr. Gilpin gave Lowery $300.00 to use in checking out Conyers' possibilities. After that, Gilpin continued to offer Lowery money if he needed it. On May 14, 1968, Gilpin gave Lowery a second $300.00. Lowery had done some carpentry and remodelling work at Station WMRE. Lowery testified that Gilpin "gave me $300 in cash ostensibly at that time as an additional incentive for the work I was doing. And he later made it clear that this money was to be applied to block the Morris application". Lowery considered the $300 to be a just wage for the work he had done, despite Gilpin's stated reasons for giving him the money.

15. On June 21, 1968, Mr. Lowery returned to Mr. Gilpin the $300.00 Gilpin had given him in March. Lowery testified that he returned the money because he did not want to collude with Gilpin or be in a position where collusion could be charged. Gilpin continued to press Lowery to accept monetary assistance to block the Morris application.

16. Sometime shortly after Mr. Lowery had filed his application for a permit to build a new standard broadcast station in Conyers, Gilpin wrote Lowery a letter representing that he was a consulting engineer for Feltman Industries. Previously, Mr. Lowery had been approached by a Mr. John Feltman who had indicated an interest in buying into Lowery's Conyers application. Lowery testified that when he found out that Gilpin was involved with Feltman, he withdrew the offer for Feltman to buy a stock interest. The letter from Gilpin encouraged Lowery to go forward with the deal with Feltman and inquired as to what had caused the delay.

17. Before filing his application for Conyers, Lowery resigned from Walton. But before resigning he had completed the work necessary to form Carmichael Radio–TV Industries, Inc., the Conyers applicant. Lowery testified that he did intend to operate the station at Conyers if he obtained a license from the Commission, and that it had not been his primary intention to block Morris' application. Had he been able to do so, he testified, he would have filed for Conyers on a different frequency. Lowery obtained his own loan letter without Gilpin's assistance. Thus, while he denied he had colluded with Gilpin in the filing of the Conyers application, Lowery claimed that Gilpin had tried to collude with him by trying to become involved in his application.

18. Lowery testified that in July 1969 he went to work for Rollins, Inc. as director of quality control. A few months later, Rollins asked him to dismiss his Conyers application because it was construed by Rollins to be a conflict of interest. He therefore requested dismissal of the application for Conyers on March 10, 1970, less than one month

after Community had filed a petition to deny the license renewal application for Station WMRE.

19. There is testimony by a Mr. William J. Aycock that in 1968 he was a candidate for Clerk of the Court for Walton County, Georgia. In September or in late August 1968, during his campaign, according to Aycock's testimony, he went to Station WMRE to purchase air time on his own behalf. He dealt with Lowery. During their conversation, Aycock said that if Deral Morris had had his station, he (Aycock) would buy time from him also, because he wanted to get his message to the voters. Lowery, Aycock testified, replied that Aycock would never be able to do that because Mr. Gilpin and he were going to put a stop to Mr. Morris building a station by constructing a station in Conyers, Georgia, in order to keep Morris out of Monroe. Aycock conceded that he did not understand exactly what Lowery meant as to how he and Gilpin were going about blocking Morris, but that Lowery definitely did say he and Gilpin were planning to build a station in Conyers to prevent Morris from going into business in Monroe. Aycock had never discussed this matter with Gilpin.

20. Lowery testified he had no specific recollection of his conversation with Aycock other than that he and Aycock did discuss the Morris application. Lowery testified that if he had discussed blocking the Morris application with Aycock, it would have been in terms of Gilpin filing an objection to that application.

21. On March 18, 1968, the consulting engineering firm of Silliman, Moffet and Kowalski was engaged by Mr. Gilpin to check into the availability of the frequency 1580 kHz at Monroe, Georgia and also to make an FM frequency study for Monroe. Gilpin advised Mr. Moffet that he anticipated someone else was going to file an application for 1580 kHz in Monroe and that he was interested in filing an application for that frequency in East Point, Georgia, if he could do so without occasioning 1 mv/m overlap with Station WMRE. Gilpin specifically requested that he be billed personally for the work he asked to be done. The bills were to be in no way identified with Station WRME. At that first meeting on March 18, 1968, Conyers, Georgia, was not mentioned.

22. The testimony of Mr. Moffet, the consulting radio engineer, discloses that on April 12, 1968, he had received a telephone call from Mr. John E. Johnson, who identified himself as an employee of Mr. Gilpin. Johnson advised Moffet that Gilpin wanted to know whether the frequency 1580 kHz would "work" in Conyers, Georgia. Moffet looked at a map of the area and thought it might. Moffet then directed his staff to check on the availability of the frequency 1580 kHz in Conyers.

23. On April 16, 1968, Mr. Moffet reported, in writing, to Gilpin that the Morris application had been filed and contained no apparent errors. Moffet's letter stated: "Except for a possible conflicting application, I can see nothing obvious from an engineering viewpoint which would hold up this application unless the FAA disapproves his tower height at this location, which is doubtful".

24. Mr. Moffet's firm determined that the frequency 1580 kHz would, in fact, "work" at Conyers, Georgia, with a 1 kw, non-directional operation, with approximately 190 mv/m from a site near the center of

the city. This determination was reduced to writing and a copy sent to Gilpin on May 13, 1968. Moffet testified that, to the best of his recollection, he had not been asked to determine whether a 1 kw station located in Conyers would occasion a 1 mv/m overlap with Station WMRE.

25. On June 12, 1968, the engineering firm of Silliman, Moffet and Kowalski received an undated letter from Gilpin, wherein the latter advised Moffet that a Clifford C. Lowery, d/b/a Rockdale Broadcasting Company, desired an application for a radio station at Conyers, Georgia. Gilpin enclosed a description of a proposed site for the Conyers station. Gilpin wrote, with respect to the site, that if it was acceptable, "we will have photo made and file as soon as possible". The letter also asked Moffet to let Gilpin know if he needed anything. Gilpin closed by saying: "Hope you are watching for cut-off date for station in Monroe". That last comment of Gilpin's was understood by Moffet to be in reference to the cut-off date on Morris' application.

26. Gilpin's letter was the first time Moffet ever encountered the name "Clifford C. Lowery". Nonetheless, Moffet immediately set up an office file on Conyers, Georgia, in the name of Clifford C. Lowery. On June 18, 1968, Moffet obtained Lowery's address from Gilpin in a telephone conversation. On June 21, 1968, the engineering firm wrote Lowery that they had been talking to Gilpin a few days before about a proposed site. The firm reported to Lowery that the site that had been sent in by Gilpin was not usable because it was too far east of Conyers. Accordingly, the letter reported, the firm was enclosing a map showing the area where a site should be obtained.

27. Moffet conceded that when the firm wrote to Lowery on June 21, 1968, no contact with Lowery had been established, except through Gilpin. Thus, the authority to prepare an application for Lowery came from (or, at least, through) Gilpin and the determination by the firm that the Conyers site proposed by Gilpin was not satisfactory was made before the engineering firm had had any contact with Lowery (as opposed to contact with Lowery through Gilpin).

28. Moffet's testimony shows that all the bills the engineering firm submitted in connection with the preparation of the Conyers application had been directed to Clifford Lowery. Indeed, after the Conyers application work was begun by the firm, Gilpin was not billed for any work done with respect to Conyers. Gilpin was last billed for AM work by Silliman, Moffet and Kowalski on June 7, 1968. That billing concerned work done for Gilpin in May of 1968. While all the AM work done for Gilpin was billed by the firm under the heading "Study 1580 K/c for possible use in Monroe", the work included studies on Conyers done for Gilpin before Lowery's name appeared.

29. Prior to the last date (June 7, 1968) on which he was billed for AM work, Moffet had determined, generally, that the frequency 1580 kHz would "work" at Conyers. In making that determination the firm used an assumed site in Conyers. Once Lowery came up with an actual site, it was necessary for Silliman, Moffet and Kowalski to make an allocation study to determine whether that site was acceptable vis-a-vis co-channel stations. In other words, Moffet testified that except for knowing that the frequency 1580 kHz would "work" at Conyers

provided the right site were obtained, the firm was required to do all the work for Lowery that would have had to be done in the preparation of any AM application. In total, Silliman, Moffet and Kowalski billed Mr. Lowery $2,312.23 in connection with work done on the preparation of Lowery's application for Conyers. Mr. Gilpin, on the other hand, paid Silliman, Moffet and Kowalski $1,015.18 for work done studying the frequency 1580 kHz.

30. The acceptance of Mr. Lowery as a client did not completely end the firm's contact with Mr. Gilpin in connection with the frequency 1580 kHz. On August 6, 1968, Mr. Gilpin telephoned Silliman, Moffet and Kowalski and indicated, among other things, that Lowery's new Conyers site location was in the mail to the firm and should arrive the next day. During the conversation, Gilpin told the firm that he was concerned about keeping the Morris application from being granted and discussed with a member of the firm various engineering prospects for preventing such a grant. Finally, on November 20, 1968, Silliman, Moffet and Kowalski reported to Gilpin's communications counsel on work done for Lowery concerning whether the Morris application would be mutually exclusive with an application for Morrow, Georgia.

31. Gilpin testified that he had never offered to finance a radio station in Conyers for anyone. Moreover, he testified that he did not have the funds to finance such an undertaking. And he testified that he had never assisted anyone in the preparation of an application for Conyers. Indeed, Gilpin denied categorically that he ever encouraged Johnson to study Conyers, Georgia, as a station location and that he had had an engineering study made for Johnson on Conyers. He denied, even, that he had ever paid Silliman, Moffet and Kowalski for a study of Conyers, notwithstanding Mr. Moffet's subsequent testimony to the contrary. He admitted only to having paid that firm the sum of $200.00 to find out if the frequency 1580 kHz would "work" in Monroe. As for Mr. Lowery, Gilpin denied that he had given money to him as part of an attempt to get Lowery to file an application for Conyers. Gilpin described his two $300.00 payments to Lowery as loans—made without notes, interest or dates of repayment.

32. As for his dealings on behalf of Mr. Feltman, Gilpin's explanation was that Feltman had asked him for assistance in locating a station in which to invest. According to Gilpin, it was Feltman who had raised the possibility of investing in the already-filed Lowery application for Conyers, Georgia. Gilpin admitted, however, that he had contacted Mr. Lowery on Feltman's behalf and that Lowery appeared interested in having Feltman as a stockholder. Lowery, Gilpin testified, became disenchanted with Feltman only after he discovered that Feltman had no money.

33. In view of the impressively persuasive evidence demonstrating motivation and aggressive actions by Gilpin to block Morris' efforts and the testimony of others, especially of Mr. Moffet, and the corroboration provided by the patently disinterested testimony of a total stranger, Mr. Aycock, the denials of wrongdoing, the contradictions, and the self-serving character of Mr. Gilpin's explanations call for their rejection as unworthy of belief.

34. In 1953, Mr. Gilpin had had the opportunity to purchase a standard broadcast station in Monroe, Georgia, but he could not afford to do so on his own. Thus, he contacted Mr. John E. Stanbury, a Collins Radio equipment salesman, whose daughter, Mrs. Clarice Prichard, agreed to invest in the station by purchasing one-half of the stock in applicant Walton.[2] The assignment of the construction permit to Walton was approved by the Commission in 1953. The station went on the air as Station WMRE in early 1954. At that time, Mrs. Prichard and Mr. Gilpin was each a 50% owner of the stock of applicant Walton. Each had invested five or six thousand dollars in the corporation. At the time Mrs. Prichard bought the stock, it was not contemplated that she would play any part in the station's operation. It was agreed that Mr. Gilpin would be the station's general manager and the President of Walton.

35. For a period of about one and a half years after Station WMRE went on the air, Mr. Stanbury, as his daughter's financial advisor, received monthly profit and loss statements from Gilpin.

36. On June 11, 1956, Mrs. Prichard and Mr. Gilpin entered into a contract calling for the former to sell and the latter to purchase Mrs. Prichard's interest in Walton. The total sale price, set at $11,000, was to be paid by June 20, 1958. The contract called for the entire purchase price to be paid to Mrs. Prichard's father, John Stanbury, who was to act as Escrow Agent.

37. In pertinent part, the contract reads as follows:

"(3) It is further mutually understood and agreed that the 'Seller' is to keep possession of the stock hereinabove described until the full amount of the purchase price is paid, and specifically does she retain all voting authority and rights.

"(4) The sale and purchase of the stock hereinabove described is all subject to the approval of the Federal Communications Commission, and when the 'Buyer' shall have paid the 'Escrow Agent' the full purchase price of the stock in accordance with the terms and conditions herein contained, and shall furnish the 'Seller' with proof of the approval of the sale and transfer of the stock by the Federal Communications Commission, then the 'Seller' obligates herself to endorse said certificate of stock to the 'Buyer' and to deliver same to him and warrant that she is the true and lawful owner and holder of said stock, and that she has a right to sell same, and that it is free and clear of all encumbrances. Within ten days after approval by the Federal Communications Commission, the 'Escrow Agent' shall turn over to the 'Seller' all the monies paid to him by the 'Buyer' upon receipt of Stock of WALTON BROADCASTING CO."

38. After the contract was signed, Mr. Gilpin discontinued sending information relative to Station WMRE to Mr. Stanbury. Gilpin paid the $11,000 over the period of two years allowed by the contract. After he received all of the money, Mr. Stanbury sent Gilpin a receipt, which stated that the money would be held until final approval was given Gilpin by the Federal Communications Commission, at which time the stock would be endorsed and turned over to Gilpin.

39. Testimony by Mr. Stanbury indicates that, in addition to the receipt, Stanbury wrote Gilpin a letter in 1958 stating that, inasmuch as the payment for stock had been received and FCC approval must now have been long since obtained, Stanbury was releasing the $11,000;

[2] In 1966 Mrs. Prichard remarried and is now Mrs. Charles Graham Buchanan.

that he had enclosed with the letter Gilpin's promissory notes marked "Paid", as well as the endorsed stock certificates; that these documents had been sent by certified mail but no return receipt was requested; and that Stanbury's belief the Commission had approved the sale was based partly on the fact that Gilpin had obtained a power of attorney from Mrs. Prichard so that she would not have to sign FCC forms. Stanbury assumed that Gilpin had used such power to obtain Commission approval of the stock purchase.

40. Gilpin conceded that he could think of no reason why he had never filed the stock purchase contract with the Commission and that he had understood the necessity of filing such a contract and had not done so. But he claimed that he never had received the stock certificates from Stanbury; never considered himself to be more than a 50% owner of Walton; never transferred ownership on the corporation's books; and had never represented to the FCC that he was anything but a 50% owner of the stock of Walton.

41. For her part, Mrs. Prichard testified that once Gilpin had paid the $11,000 she no longer considered herself to be the owner of the company's stock. The evidence shows, moreover, that subsequent to 1958 Mrs. Prichard had received no communication from Walton advising her of meetings of officers, directors or shareholders and that she had attended none.[3] Likewise, it appears that she was never notified by Gilpin or Walton that she had been elected to any position in the corporation. The only money she ever received as a result of her investment in Walton was the $11,000 Gilpin paid her for her stock.

42. Mr. Stanbury's testimony disclosed further that his only contact with Gilpin after 1958 and before 1968 or 1969 had been in 1962, when Gilpin had telephoned him from Los Angeles. Gilpin, Stanbury testified, seemed to be in a hysterical state. He asked Stanbury if he was sure that he had mailed the stock to him. Stanbury checked his files and found a memorandum he had made which confirmed the mailing and he read it to Gilpin.

43. Mr. Gilpin testified that Mrs. Prichard had attended meetings of the stockholders or board of directors of Walton since 1957, but he was unable to recall which ones. He claimed that he had always sent her notices of meetings of the directors and officers of the corporation and that none were ever returned by the Post Office as undeliverable. Consistently, between 1957 and 1969, in reports to the Commission, Gilpin listed Mrs. Prichard's address as Knoxville, Tennessee. In fact, while Mrs. Prichard had resided in Knoxville until 1962, she had moved that year to Newport, Tennessee. In 1963 she moved again, to Chattanooga. Gilpin never contacted Stanbury over the years as to where his daughter was living. And, after electing her to the board of directors on December 5, 1969, he did not notify her of this because he did not know where she lived in 1969.

44. Mr. Gilpin agreed that he had completed payment of the $11,000 for Mrs. Prichard's stock in 1958. And, indeed, he conceded that upon making the final payment he "probably asked for the stock". He persisted, however, in maintaining that he had not received the

[3] While formalities of meetings could have been observed, Mr. Gilpin in fact selected the corporate officers and directors (T. 766, 767). Mrs. Prichard was a director of Walton during certain periods after 1956.

stock certificate. And even though he did not receive the stock certificate, Gilpin never again asked for it, according to his testimony, after the year 1958. He assumed that the stock certificate was lost but had no basis for such an assumption (which he first made in late 1968 or early 1969), other than the fact that he does not have the stock. The stock had never been voted since 1954.

45. Despite the fact that he had paid $11,000 and had never received the stock, Gilpin, it seems, did nothing to obtain the stock certificate because, according to his testimony, he had no right to possession until the transfer had been approved by the Commission. He testified, further, that he could not explain why, having paid for the stock, he considered Mrs. Prichard to be the owner. And he testified, moreover, that he did not know why he never had new stock certificates prepared and issued to himself.

46. Finally, in 1968 the so-called "lost" stock certificate appears to have become a problem to Mr. Gilpin because he wanted it to use as collateral for a loan. Gilpin then told his communications counsel about the "lost" certificate and the latter located Mrs. Prichard—now Mrs. Buchanan. Stanbury, it seems, had received in 1968 or 1969, a telephone call from Gilpin's communications counsel, who had asked him if he knew that Gilpin had never filed for a transfer of Mrs. Prichard's stock. Stanbury did not know.

47. On December 30, 1969, Walton filed an application with the FCC for its consent to the transfer of Mrs. Prichard's stock to Gilpin. The application, which was amended on April 24, 1970, to reflect the fact that Mrs. Prichard had become Mrs. Buchanan, among other matters, contained no specific reference to the prior transfer agreement of 1956. The application contained a document, however, entitled "Agreement to Transfer Stock and to Replace Lost Certificates". That document does contain a provision to the effect that the new agreement "revoked all agreements between the parties heretofor (sic) made", which represents that the "certificates representing the ownership of stock by the SELLER have been lost, and although diligent search has been made said certificates have not been found". The new agreement includes the following clause:

> "3. Subject to the authorization of the Federal Communications Commission, first had and obtained, the SELLER sells all of her stock in the Walton Broadcasting Company to the PURCHASER, and the Walton Broadcasting Company shall prepare and deliver certificates of stock in the name of the Purchaser, the assignment of said certificates from the SELLER to the PURCHASER being effected by this agreement upon the payment therefor (sic) of $11,000.00 to the SELLER and upon the authorization for such transfer having been made by the Federal Communications Commission."

The new (1969) agreement was purportedly signed by Clarice Prichard and Warren Gilpin on December 17, 1969. However, in point of fact it was developed that it had not been signed by Mrs. Prichard, but by her father, Mr. Stanbury. And also, it seems that he did not affix her signature in December 1969, but in March 1969. Later, he affixed his daughter's signature to the assignment application on December 17, 1969.

48. Mr. Stanbury testified he had not understood that, by signing the agreement in March 1969, he was canceling the 1956 agreement. He had not intended to return the $11,000. No one told him it would be neces-

sary to return the $11,000. Mrs. Prichard, likewise, agreed that she never intended to return the $11,000. In fact, there is no evidence that the $11,000 was ever returned, or that anyone asked that it be returned to Gilpin.

49. In November 1970, as part of its petition for reconsideration filed on November 27, 1970, applicant Walton purported to rescind the new agreement described above and, instead, each party was to sell his 50% to a third party. In the so-called rescission agreement Mrs. Prichard (now Mrs. Buchanan) was to sell her interest for "the same consideration, eleven thousand dollars ($11,000) that she had originally agreed to receive for the sale of the stock to Warren Gilpin. The said eleven thousand dollars was paid by Warren G. Gilpin to John Stanbury as escrow agent pursuant to the sales agreement dated June 11, 1956, receipt of which was acknowledged".[4]

50. The testimony of Mr. Frank Deral Morris, Community's President, indicates that during his tenure at Station WMRE (January 1954 through January 8, 1968) he had never met Mrs. Prichard, although he had seen her name on FCC forms. Curiosity caused Morris to ask Gilpin who she was. Gilpin, it seems, replied that Mrs. Prichard was his partner on paper and that if he was ever sued, for any reason, he would only be a half owner of Station WMRE. While at Station WMRE, Morris became station manager and Secretary-Treasurer of Walton. He testified, further, that Gilpin simply dictated minutes of officers' meetings and directed the officers to sign the written document.

51. The transcript of a trial held in Walton, Georgia Superior Court, May Term 1968, reads (at page 1) as follows (Emphasis in quote added):

"WARREN GILPIN, being duly sworn, testified on cross-examination by Mr. Preston.

Q. Your name is Warren S. Gilpin?

A. Yes.

Q. Where do you live?

A. 400 Pine Circle, Monroe, Walton County.

Q. Mr. Gilpin, you are the President of Walton Broadcasting Company?

A. Yes.

Q. *Is it not true also that you are the sole stockholder in Walton Broadcasting Company?*

A. *At the moment, yes.*

Q. *By that you mean that all the stock of Walton Broadcasting Company is listed in your name?*

A. *Yes.*

Q. And no other person, firm or corporation has any stock in it at this time?

A. I think I have it all."

Later in the same transcript the following additional testimony is recorded:

CROSS EXAMINATION BY MR. PRESTON

"Q. Mr. Gilpin, I believe you testified yesterday that Gamaliel Enterprises is a company owned by you and it had a sole proprietorship Warren G. Gilpin, doing business as Gamaliel Enterprises? Is that correct?

A. Yes, sir.

[4] In ruling on the petition for reconsideration, the Commission observed that all the compensation from the agreement was to go to Gilpin "thus apparently reinforcing the allegations that an unauthorized transfer of control has taken place and was concealed from the Commission in the filing of various reports for an extended period of time" (28 FCC 2d 111, at 115).

Q. And you also testified yesterday that you are the only stockholder in Walton Broadcasting Company?
A. At the moment, yes, sir.
Q. Well, you own all the stock certificates?
A. Yes."

52. In November 1968, in a different case, Gilpin testified in the same court before the same judge. His testimony in the latter trial on the question of stock ownership in Walton is confusing, to say the least. Thus, at one point he said he was not sure whether he was the only stockholder in Walton. Then, he said he *was* the only stockholder. Then, again, he said he was not sure. Finally, in response to the question: "You are president and sole stockholder of the corporation, aren't you?", Gilpin replied, "Yes".

53. In both trials, the official court transcript was recorded by the Court Reporter for the Western Judicial District of Georgia, Miss Ollie Andrews, who has held the position for twenty-five years. Miss Andrews testified that she transcribes testimony in shorthand, backed up by a recording machine, which runs throughout the taking of the testimony. After the two trials described above, she returned to her home in Athens where she typed the trial record from her shorthand notes and the recording that had been made. Upon completion of each transcript, she gave the original to the Clerk of the Court and the second original to Gilpin's attorney. In turning a copy over to the court, after each trial, she certified her transcripts to be correct. Had any questions been raised before the court as to the accuracy of the transcripts she would have been notified thereof by a motion to correct transcript. No such motion was filed in either proceeding. In the cases of the testimony referred to above, she has had occasion to recheck the transcript with her recordings of the trials and found them to be accurate.

54. Mr. Henry P. Austin, Jr. testified in this proceeding at a time prior to the date when he became the licensee of Station WMRE through the involuntary assignment mentioned above. According to this testimony Austin attended the May 1968 term of Walton Superior Court as a spectator and heard the entire proceeding. He claimed that he remembered, with particularity, Gilpin's testimony regarding the ownership of Walton; and that during the May 1968 trial Gilpin had testified that he owned half the outstanding stock and that some lady in Tennessee owned the other half. He testified further that he had read the transcript of the May trial and cannot understand that portion of it wherein Gilpin is reported to have said that he was the sole owner of the Walton stock.

55. At the time of the May 1968 trial, Mr. Austin, an attorney, had not been engaged in any capacity. He was merely a spectator. Later, in December 1968, he became associated with J. E. Briscoe, a Monroe, Georgia, attorney, who had been Gilpin's and applicant Walton's attorney at both the May and the November trial. Since then Austin, himself, has handled some legal and tax matters on behalf of Gilpin.

56. Austin conceded that Miss Andrews' reputation as a court reporter is good and that the judge at both trials has a very good reputation in terms of conducting a trial. Nonetheless, he claimed, sometimes the Judge's attention is diverted and he fails to notice that the reporter is in the process of changing a tape.

57. Austin was shown the first page of the transcript from the May trial. He specified the place where he thought Gilpin had indicated that half of the Walton stock was owned by a woman in Tennessee. Austin then testified that Gilpin's responses had been erroneously reported. When it was pointed out to Austin that, of necessity, the questions that flow from the answers must also be in error if he is correct. Austin agreed. Thus, it was Austin's position herein that the reporter changed not only Gilpin's responses but also the questions of counsel. Asked if he was present during the second (November) trial when Gilpin had testified, Austin said that he was but that he could recall none of the testimony. Austin's only explanation for his claim as to the reporter's failure to report the testimony as he, allegedly, had heard it was that she must have been changing tapes and missed it. Gilpin also testified herein that he did not, during the May 1968 trial, state that he was the sole stockholder of Walton.

58. Mr. J. E. Briscoe, Jr. was Mr. Gilpin's attorney during both the May and November trials. He testified that he did *not* dispute the accuracy of either trial transcript. In fact, Briscoe's written proposed charge to the jury in the November trial reads as follows (emphasis in quote added):

"While upon equitable principles the legal entity of a corporation may be disregarded when it is the mere alter ego or business conduct of an individual, or when the motive of its legal entity is used to defeat public conveniences, justify wrong, protect fraud, or defend crime, it is the general rule that although *one person owns all the stock of a corporation*, he and the corporation are in law two separate and distinct persons."

59. During the May 1968 trial, at another point in the trial, the transcript shows the following testimony by Gilpin in referring to Walton:

"Q. You are the sole stockholder, aren't you?
A. Yes, sir, but a corporation has this right."

60. Finally, Mr. Frank Deral Morris had been a party in both the May and November 1968 trials, and he testified that in each instance Gilpin had stated that he owned all the stock in Walton. Morris testified that he never heard Gilpin state that half of Walton's stock was owned by a lady in Tennessee.

61. As thus reviewed in detail, the testimony and evidence is overwhelmingly persuasive that, in fact, Mr. Gilpin had regarded himself as the sole stockholder of applicant Walton, at a time when it suited his purpose to do so (before he got into trouble with this Commission), *ante litem motam;* and that when it suited his purpose to undo, before this Commission, the effects of an unauthorized transfer of applicant Walton, the so-called "rescission" of 1970 was entered into (para. 47–49, incl., *supra*). Mr. Gilpin is thus regarded as having been hoist by his own petard and the rationalizations after the event in his testimony herein are rejected as not worthy of belief or as inherently improbable. Too, the testimony of lawyer Austin concerning the possibility of transcription errors, in particular, in the May 1968 court hearing is patently conjectural and simply does not stand up in the face of the court record and the testimony of the Official Court Reporter who transcribed the evidence. Mr. Austin, while having been shown to have had no financial or other interest in the subject matter of the litigation

in May 1968 (although he subsequently was retained by Mr. Gilpin), was not shown to possess such a sharp and enduring memory of what transpired during the May 1968 hearing that his testimony herein could be accepted as altering the written court record. Indeed, on balance, the obvious testimonial efforts in this proceeding to explain away facts that are damaging or detrimental to Mr. Gilpin are to be regarded as little short of preposterous and certainly unworthy of being given credence.

Issue 3

62. Issue 3, *supra*, asks whether false and misleading information regarding the ownership and control of Walton had been submitted to the Commission. The question of ownership and control has been discussed, *supra*, under Issue 2. The question of the Ownership Reports filed with the Commission by Walton will be discussed, *infra*, under Issue 5. In addition, applicant Walton had submitted an affidavit of Mr. Gilpin, dated March 30, 1970, in its Opposition to Petition to Deny. Therein, Gilpin, after conceding that he had paid $11,000.00 for Mrs. Prichard's stock, asserted that he had never received the stock and had never considered himself to be other than a half owner of Station WMRE. He also denied he had testified in two local trials that he was the sole owner of Station WMRE. He alleged that in each trial he testified he was a 50% stockholder. Gilpin also denied that he did not instigate the filing of the Conyers, Georgia application. And he swore that Mr. Johnson had approached him with a market study of Conyers and had tried to obtain his (Gilpin's) financial support. Gilpin said that Johnson was trying to take advantage of the situation, but that he had given him no money. As for Mr. Lowery, Gilpin alleged he had lent him $300.00 on two occasions, but denied knowledge of what use Lowery made of the loans. Finally, Gilpin swore that he never assisted Lowery in any way, form or manner in preparing or filing an application for Conyers.

Issue 4

63. Issue 4 asks that a determination be reached as to whether Walton violated Section 1.613(b) of the Commission's Rules in failing to file copies of contracts relating to ownership and control. The rule prescribes that a licensee file any agreement affecting, directly or indirectly, the ownership of its stock within thirty (30) days of execution of such agreement. As found above, on June 11, 1956, Mr. Gilpin and Mrs. Prichard entered into a contract calling for the latter to sell and the former to buy Mrs. Prichard's interest in applicant Walton. Mr. Gilpin understood the requirements of Section 1.613 of the Rules at that time (1956), the evidence shows. Walton did not file the agreement, the record discloses, and Gilpin was unable to rationalize this omission. In fact, the Commission had not been apprised of the existence of the contract until the licensee, on March 30, 1970, submitted a copy in its Opposition to Community's Petition to Deny, which petition was filed on February 24, 1970.

Issue 5

64. Issue 5 requires a determination as to Walton's compliance with Section 1.615(a)(1)(i), (a)(1)(iv), (a)(4)(i), and (c) of the Commission's Rules in its submission of Ownership Reports (Form 323).

65. Rule 1.615, *supra*, has been amended or revised on several occasions since the year 1954. The ownership report provision, in particular, was prescribed in Section 1.343 in 1954. Since that year the rule, though revised from time to time, has consistently required the filing of ownership reports on FCC Form 323. Such forms have been filed by applicant Walton. In pertinent part the rule today provides as follows:

"§ 1.615 Ownership Reports.

(a) Each licensee of a . . . standard broadcast station . . . shall file an Ownership Report (FCC Form 323) at the time the application for renewal of station license is required to be filed . . . Ownership Reports shall give the following information as of a date not more than 30 days prior to the filing of the Ownership Report:

* * * * * * *

(3) In the case of a corporation, association, trust, estate or receivership, the data applicable to each:

(i) The name, residence, citizenship, and stock-holdings of officers, directors, stockholders, trustees, executors, administrators, receivers, and members of any association;

* * * * * * *

(iv) Full information on FCC Form 323 with respect to the interest and identity of any person having any direct, indirect, fiduciary, or beneficiary interest in the licensee or any of its stock;

(4) In the cases of all licensees:

(i) A list of all contracts still in effect required to be filed with the Commission by § 1.613 showing the date of execution and expiration of each contract;

* * * * * * *

(c) A supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report shall include without limitation:

(1) Any change in capitalization or organization;

(2) Any change in officers and directors;

(3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock, such as:

(i) A transfer of stock;

(ii) Issuance of new stock or disposition of treasury stock; or

(iii) Acquisition of licensee's or permittee's stock by the issuing corporation; or

(4) Any change in the officers, directors, or stockholders of a corporation other than the licensee or permittee such as X, Y, or Z corporation described in the example in paragraph (a)(3) of this section.

"NOTE: Before any change is made in the organization, capitalization, officers, directors, or stockholders of a corporation other than licensee or permittee, which results in a change in the control of the licensee or permittee, prior Commission consent must be received under § 310(b) of the Communications Act and § 1.540. A transfer of control takes place when an individual, or group in privity gains or loses affirmative or negative (50 percent) control. See instructions on FCC Form 323 'Ownership Report'."

66. In an Ownership Report dated December 31, 1957, signed by Mr. Gilpin and filed with the Commission on January 2, 1958, applicant Walton reported that Mrs. Prichard, Dogwood Road, Knoxville, Tennessee, was a director, elected on October 18, 1957, and that she

owned 50% of Walton's voting common stock. Mr. Gilpin was listed as owning the remaining 50% of the voting common stock. In a further Ownership Report dated December 20, 1960, filed in January 1961, applicant Walton reported that there were no contracts of the sort described in Rule 1.342 (recodified as Section 1.613). It likewise reported that Mrs. Prichard, Dogwood Road, Knoxville, Tennessee, was a director and owner of 50% of Walton's voting common stock. In a further Ownership Report dated March 6, 1963, Walton again failed to list any contract covered by Section 1.342 of the Rules and stated that there had been no change in the ownership of stock. In a further Ownership Report dated December 27, 1963, Walton again indicated there were no contracts covered by Section 1.342 of the Rules and listed Mrs. Prichard, Knoxville, Tennessee, as an owner of 50% of Walton's voting common stock. In a further Ownership Report dated December 22, 1966, filed in January of 1967, the applicant reported no contracts covered by Rule 1.613 and listed Mrs. Prichard as the owner of 50% of Walton's voting common stock. In a further Ownership Report dated January 9, 1968, filed on January 12, 1968, Walton reported no contracts covered by Section 1.613 of the Rules and listed Mrs. Prichard of Knoxville, Tennessee, as a director (elected December 15, 1967) and owner of 50% of the voting common stock. Finally, in a further Ownership Report dated December 22, 1969, a contract between Gilpin and Prichard, dated December 17, 1969, is described; and Mrs. Prichard is listed as a resident of Knoxville, Tennessee, and the owner of 50% of Walton's voting common stock. All the above reports were apparently signed on behalf of applicant Walton by Mr. Gilpin.

CONCLUSIONS

67. In reviewing the evidence of record in this proceeding, the substitute Administrative Law Judge could not help but be impressed with, or struck by, the overwhelming persuasiveness with which it points to chicanery and deception by Mr. Gilpin and to his abject failure to measure up as a qualified owner of a broadcast licensee. Indeed, the argument that Gilpin's assumption of positive control of Station WMRE and his omission to inform the Commission thereof over a lengthy period was a mere "technical violation" due to "inattentiveness", is nothing if not casuistic and specious. For it involves a naive acceptance of his testimony at face value with the concomitant rejection of the corroborated evidence of several persons, including Mrs. Prichard's and Mr. Morris', while also virtually ignoring documentation that clearly hoists Mr. Gilpin by his own petard. Illustrative is Morris' testimony regarding Gilpin's admission to him that Mrs. Prichard was meant to be only a partner on paper in case he (Gilpin) were ever sued, and the repeated false statements filed with this Commission over the years to the effect that no contract or agreement of the kind contemplated by Rule 1.613 existed. Moreover, the explanation Gilpin gave for not asking for Mrs. Prichard's stock certificate, after paying her the $11,000.00 purchase price agreed to, until 1968 (some 10 years later) when allegedly the "lost" certificate became a problem to him, strains reason and points, on the contrary, to a studied effort by Gilpin to remake the facts in his favor. If, as Gilpin asserted, he

had no right to possession of the stock certificate until the Commission approved the transfer from Mrs. Prichard, one is led to wonderment as to why Mr. Gilpin had not filed a timely application for such Commission authorization in the first place. In the face of it all, the transparent attempt, in 1969, to undo what had been done in 1956 resembles more a studied effort to cancel incriminating facts than a genuine attempt to accomplish the rescission of a contract.

68. Added to the proof of the unlawful transfer of control that occurred in this case, for which Gilpin was solely or primarily responsible, the evidence of his misconduct adduced under the remaining issues designated by the Commission serves to increase the gravity of Mr. Gilpin's total misconduct and make all the more ineluctable a conclusion that applicant Walton is simply not fit to remain as a licensee of this Commission. It is thus about as clear as it will ever be in a Commission proceeding that Mr. Gilpin did his best to instigate the filing of a strike application for Conyers, Georgia. *Cf. Blue Ridge Mountain Broadcasting Co., Inc.*, 37 FCC 791. Indeed, it would be most unusual, if not entirely unique, for the Commission to stumble on a situation of this sort that was provable wholly by direct, as distinguished from circumstantial, evidence. Because evidence is characterized as "circumstantial", however, does not necessarily result in its denigration or make it *ipso facto* less reliable or dependable as proof of wrongdoing. Inference and pragmatic judgments, in fact, are an inherent part of the judicial process. *Cf. Federal Trade Commission* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 385 (1965). Here, we have demonstrated on the hearing record a clear, admitted motive by Mr. Gilpin to ultilize Commission procedures in order to keep out, or thwart, competition from Community; his energetic promotion of the filing of an application for Conyers in order to block the Community application for Monroe; his expenditure of a significant sum for an engineering study to determine whether the frequency 1580 kHz would "work" at Conyers, for no comprehensibly justifiable reason except to support an effort to block Community's proposal for Monroe; and Gilpin's loans to an employee (Lowery) apparently for the purpose of assisting the latter in financing the preparation of an application. Further, Mr. Gilpin's claim that he did not pay for an engineering study of Conyers, Georgia is belied by the contrary testimony of two responsible witnesses, Messrs. Moffet and Johnson. It is unnecessary to speak further on this particular subject, except again to observe, in conclusion, that the wholly disinterested testimony of Mr. Aycock, a stranger to broadcasting, demonstrates beyond cavil that in late 1968 Messrs. Lowery and Gilpin were planning to build a standard broadcast station in Conyers, Georgia for the purpose of preventing Mr. Morris from building one in Monroe, Georgia. Other facts are set forth in great detail above. There is no need for their further repetition at this juncture. They require that it be concluded that Mr. Gilpin "participated" in the filing of the Conyers, Georgia application for at least an "incidental" purpose of delaying or obstructing Community from building a competing broadcast facility in Monroe, Georgia.

69. There is no need to belabor additional instances of misrepresentations by Mr. Gilpin. However, after he assumed complete ownership of the applicant, in 1958, we cannot help but take note that he

regularly and continually misinformed this Commission not only concerning the existence of the 1956 contract with Mrs. Prichard, but also about the ownership of the stock of applicant Walton. This fraud, *perpetuated lately* in an affidavit Gilpin submitted in support of Walton's Opposition to the Petition to Deny its renewal-of-license application, wherein he baldly asserted that he never considered himself to be more than a 50% stockholder, is rendered transparent by Gilpin's conduct and contrary testimony in local court proceedings, and by the belated effort, during the hearing herein, to get the transcripts of the local court proceedings to say something different than the language the Official Court Reporter transcribed.

70. Walton clearly violated Rule 1.613(b), as Gilpin has in fact conceded, by not providing the Commission with a copy of his 1956 contract with Mrs. Prichard until the year 1970, over 13 years afterward, instead of within the prescribed period of 30 days from the date of execution. The record reflects no excuse whatever by Mr. Gilpin for this striking omission to file.

71. The Ownership Reports (FCC Form 323) Gilpin filed on behalf of the applicant were repeatedly false in regard to disclosure of the 1956 Gilpin-Prichard contract and as regards the continual untrue listings of Mrs. Prichard as a 50% stockholder in applicant Walton.

72. Finally, by way of summary reiteration without intending to down-grade in any way the gravity or importance of the rule violations and the other misleading information and fraudulent representations that have been brought to light in this proceeding against a Commission licensee, the substitute Administrative Law Judge herein feels constrained to agree completely with the comment of the Commission's Broadcast Bureau at paragraph 11, page 43 of their proposed conclusions of law and to quote this particular paragraph *verbatim* (with emphasis in quote added):

> "11. By his assumption of complete control over WMRE without authorization, Gilpin set out on a course of conduct which resulted in this Commission being, for years, denied essential information. *The Commission, and the general public, for that matter, should be able to rely on the information a licensee submits with respect to questions of ownership.* Yet, since 1958, the information submitted by Walton has been false. Gilpin's testimony that he has never considered himself to be the sole stockholder of Walton must be rejected as a self-serving statement which is belied by his own conduct. Had he considered Mrs. Prichard to be his equal in ownership of Walton, then it would appear only natural that he would have contacted her at least one time in the ten year period between 1958 and 1968. He would have kept informed as to her changes in residence and marital state. He did not do so because he knew that he owned all of Walton's stock, whether he had actual possession of all its shares or not. The record is devoid of any evidence to support a conclusion that Mrs. Prichard, either on her own or at Gilpin's request, ever exercised a single prerogative of stock ownership or licensee responsibility after 1958. Such factors, when considered in conjunction with the absolute authority over Walton and WMRE exercised by Gilpin, mandate the conclusion that Gilpin assumed positive control over the licensee without seeking Commission authorization, in violation of Section 310(b) of the Act." [5]

The Administrative Law Judge concludes, further, that there is no redeeming or extenuating circumstance to be found in the present record which would justify anything but the imposition of the severest of sanctions. Indeed, anything less will put this Commission

[5] A footnote to the above quotation has been omitted.

in the position of appearing to be sanctimonious and insincere in its oft-repeated strictures against unreliable licensees.[6] *Cf. Ralph J. Silkwood and K. C. Laurance (Transferors) and W. H. Hansen (Transferee) et al.*, 34 FCC 2d 989, 991, 994 and 995, para. 5, 12 and 13 (Decision released May 24, 1972), and with particular attention invited to the precedents cited in footnote 17 to para. 13.

7.3 Accordingly, it is concluded ultimately that the public interest, convenience and necessity will not be served by granting the application herein of Walton Broadcasting Company for Renewal of License of Station WMRE, Monroe, Georgia; and

IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's rules, the application of Walton Broadcasting Company for Renewal of License of Station WMRE, Monroe, Georgia, is hereby DENIED, and, further, that the said licensee TERMINATE ITS OPERATION of Station WMRE at midnight of the day following the date this Initial Decision becomes final, or as otherwise ordered by the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
DAVID I. KRAUSHAAR, *Administrative Law Judge.*

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[6] As indicated (para. 3, *supra*), the Commission previously denied a petition by receiver Austin for "Extraordinary Relief" that, among other matters, sought the termination of the instant proceeding, and approval of a proposed assignment of the Station WMRE license from Mr. Austin to three Monroe, Georgia, residents. *Memorandum Opinion and Order*, released November 27, 1972 (38 FCC 2d 207). In doing so, the Commission held (para. 4): "We do not believe that the above allegations justify [the relief described] . . . while serious questions concerning the character qualifications of Mr. Gilpin and Walton remain unresolved". This ruling constitutes the 'law of the case' and it cannot be disturbed absent a clear and persuasive showing (not made herein) that there will be no significant benefit accruing to any wrongdoers. *Id.* para. 5. And compare *Image Radio, Inc., et al.*, para. 9–11, incl., 15 FCC 2d 317, at pp. 320, 321 (1968).

F.C.C. 73-1224

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notice to
WESTERLY BROADCASTING CO., NEW HAVEN, CONN.
Concerning Combination Rates

NOVEMBER 21, 1973.

WESTERLY BROADCASTING CO.,
Radio Station WNHC,
P.O. Box 1340,
New Haven, Conn. 06510

GENTLEMEN: This is with reference to your letter of July 25, 1973, in response to the Commission's letter dated July 18, 1973, concerning the use of combination rates by WNHC and WPLR(FM). It appeared that you and the licensee of Station WPLR(FM), both stations licensed to New Haven, Connecticut, were represented by Katz Radio, that Katz began using a rate card showing cost of time on both stations at their regular rates and that advertisers offered the option to purchase time on both stations. It further appeared that the rates were not less than the combined separate rates and that there was no attempt to require an advertiser to buy time on both stations.

In the letter of July 18, 1973, the Commission found this use of combination rates to be in violation of its policy adopted January 30, 1963, in which it stated that combination rate agreements or practices by independent stations serving the same area raise serious questions under the policies underlying the anti-trust laws (15 U.S.C. 1), conflict with establishment Commission policy, and are contrary to the public interest. You were requested to state what action you had taken to discontinue the practice.

In your reply, you state that you have discontinued the practice but request a hearing to explain your past involvement and to aid the Commission in arriving "at a firmer position regarding combination rates by stations in the same market."

Considering all the circumstances in this case, we are not persuaded to grant a hearing. As you may be aware, on July 18, 1973, the Commission adopted a Notice of Inquiry and Notice of Proposed Rule Making in which the Commission is seeking information regarding its policies relating to combination advertising rates and other joint sales practices. We believe that this should afford licensees and other interested parties an opportunity to present information for consideration by the Commission in reaching a conclusion concerning the matter.

Commissioner H. Rex Lee absent.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

F.C.C. 73-1218

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. CLIFFORD H. WILMATH
against
COLUMBIA BROADCASTING SYSTEM

ORDER

(Adopted November 21, 1973; Released November 29, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it an Application for Review, filed on July 20, 1973 by Mr. Clifford H. Wilmath, of the ruling of the Broadcast Bureau of June 22, 1973. The ruling denied Mr. Wilmath's complaint based upon the March 5, 1972 CBS program, 60 MINUTES, concerning mobile homes.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. However, we believe that some discussion is warranted regarding an allegation by complainant which had been raised in earlier letters to the Commission, and which concerned CBS' 49% ownership in Klingbeil, Inc. The Bureau's June 22 ruling was in response to Mr. Wilmath's April 12, 1973 complaint, which appeared to have been based upon the fairness doctrine, and which did not raise directly the Klingbeil ownership matter. However, since Mr. Wilmath had raised this matter in 1972 and again raises it in his Application for Review, we believe it appropriate to deal with it at this time.

3. Mr. Wilmath had contended by letters of March 10 and April 6, 1972 that CBS' decision to broadcast the program critical of the mobile home industry was influenced by CBS' 49% ownership in Klingbeil, Inc., a Florida development corporation. The Bureau then sent a letter of inquiry to CBS requesting its comments and also informed Mr. Wilmath of the Bureau's action. CBS responded to the inquiry concerning this matter,[1] stating that:

> With respect to the complainant's allegation that CBS failed to disclose its interest in Klingbeil, we do not believe that such a disclosure is required or even

[1] Following receipt of CBS' response and complainant's reply thereto, the Bureau, on February 12, 1973 advised Mr. Wilmath that no further action was warranted on this aspect of his complaint. The Bureau further advised him that the fairness doctrine may be applicable to his complaint and enclosed information pertaining to the procedures to follow and the information the Commission must have in connection with the filing of fairness doctrine complaints. He then filed his April 12, 1973 complaint.

appropriate during the course of a bona fide news report by a professional news organization. While such disclosures may well be appropriate in cases where evidence can be presented that licensee has included broadcast material for the purpose of promoting non-broadcast interests, such disclosure would not be appropriate in connection with news reports.

4. Without passing upon the merits of the specific CBS argument quoted above, we believe that the circumstances of the present case differ so substantially from those in which we have found it necessary for a licensee or commentator to disclose his private financial interest in a subject discussed on the air, that no clear finding can be made in the present case that disclosure of CBS' interest in a Florida real estate development was necessary.

5. The two leading cases on this subject are *Gross Telecasting, Inc.*, 14 FCC 2d 239 (1968), where the licensee broadcast an editorial over its facilities advocating one side of a controversial issue of public importance in which the licensee had a private financial interest, without disclosing such interest, and *Letter to NBC*, 14 FCC 2d 713 (1968), where Chet Huntley made certain critical references to the Wholesome Meat Act in a News commentary and, because of his direct interests in the cattle business, the Commission found that NBC had "fallen short of its responsibility with respect to such matters" by failing to disclose such interests. Here, in contrast to the circumstances in *NBC*, *supra*, the idea for the broadcast, according to CBS, originated from the 60 MINUTES producer's discussion with a "State Assistant Attorney General with whom he had consulted on the filming of a consumer report on unfair practices in the auto repair industry." As set forth above, CBS denies that its ownership in Klingbeil, Inc. was related to the mobile home segment of 60 MINUTES. There is no evidence before the Commission to the contrary. The conclusions of the Bureau, which we believe correct, that CBS has presented views favorable to the mobile home industry and critical of the anti-mobile home views broadcast on 60 MINUTES, and was not unreasonable in its actions herein, appear to support CBS' contention that its Klingbeil ownership did not influence its decision to present the program in question. This is in contrast to *NBC*, *supra*, where the Commission stated, with respect to the fairness obligations arising from Mr. Huntley's commentary, that NBC took no steps to achieve compliance with the fairness doctrine, and "only" because of the action of Congressman Smith "knocking on the licensee's door" were contrasting views presented on the issues raised in Huntley's commentary. We have frequently stated that we are reluctant to intervene in the news judgments of licensees "lacking extrinsic evidence or documents that on their face reflect deliberate distortion." *Selling of the Pentagon*, 30 FCC 2d 150 (1971); *Hunger in America*, 20 FCC 2d 143 (1969); *Network Coverage of the Democratic National Convention*, 16 FCC 2d 650 (1969); *Letter to Mrs. J. R. Paul*, 26 FCC 2d 591 (1969). "Our objective is to encourage broadcast journalism, not to hurt or to hinder it." *Selling of the Pentagon*, *supra*, at 154. In view of the foregoing, we find no basis for further Commission action in this matter.

6. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the above-captioned Application for Review IS DENIED.[2]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] By letter dated October 15, 1973, Accuracy In Media filed a statement in support of Mr. Wilmath. This letter did not comply with the provisions of Section 1.115 of the Rules. Also, it contained no information which would cause us to alter our finding herein that the Bureau's ruling of June 22 was correct.

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